

# **BCI Exhibit 635**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)  
HOLDINGS, INC., et al, (Jointly Administered)  
Debtors.

-----x

DEPOSITION OF EDWARD J. ROSEN

New York, New York

February 19, 2010

Reported by:

MARY F. BOWMAN, RPR, CRR

JOB NO. 28461

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<p>1 2 3 4 5 February 19, 2010 6 9:35 a.m. 7 8 Deposition of EDWARD J. ROSEN, held at 9 the offices of Cleary, Gottlieb, Steen &amp; 10 Hamilton, LLP, One Liberty Plaza, New York, New 11 York, before Mary F. Bowman, a Registered 12 Professional Reporter, Certified Realtime 13 Reporter, and Notary Public of the State of New 14 York and New Jersey. 15 16 17 18 19 20 21 22 23 24 25  TSG Reporting - Worldwide 877-702-9580</p>	<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: ROBERT W. GAFFEY, ESQ. 9 10 11 BOIES, SCHILLER &amp; FLEXNER, LLP 12 Attorneys for Barclays and The Witness 13 5301 Wisconsin Avenue, NW - Suite 800 14 Washington DC 20015 15 BY: HAMISH HUME, ESQ. 16 17 18 QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP 19 Attorneys for the Creditors Committee 20 51 Madison Avenue - 22nd Floor 21 New York, New York 10010 22 BY: ROBERT DAKIS, ESQ. 23 24 25  TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 2 APPEARANCES: 3 4 HUGHES, HUBBARD &amp; REED, LLP 5 Attorneys for the SIPA Trustee 6 One Battery Park Plaza 7 New York, New York 10004-1482 8 BY: WILLIAM R. MAGUIRE, ESQ. 9 AMINA HASSAN, ESQ. 10 11 CLEARY, GOTTLIB, STERN &amp; HAMILTON, LLP 12 Attorneys for the witness 13 One Liberty Plaza 14 New York, New York 10006 15 BY: BOAZ S. MORAG, ESQ. 16 ROBERT P. DAVIS, ESQ. 17 18 19 20 21 22 23 24 25  TSG Reporting - Worldwide 877-702-9580</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25  TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 (Exhibit 622, declaration of Edward J.</p> <p>3 Rosen marked for identification, as of this</p> <p>4 date.)</p> <p>5 EDWARD J. ROSEN,</p> <p>6 called as a witness by the parties,</p> <p>7 having been duly sworn, testified as follows:</p> <p>8 EXAMINATION BY</p> <p>9 MR. MAGUIRE:</p> <p>10 Q. As you know, my name is Bill Maguire</p> <p>11 with Hughes, Hubbard &amp; Reed. I am here with my</p> <p>12 colleague Amina Hassan. We represent James</p> <p>13 Giddens, the SIPA trustee.</p> <p>14 We are going to ask you some</p> <p>15 questions. If any questions are unclear, let me</p> <p>16 know. If you need to take a break at any time,</p> <p>17 just let me know.</p> <p>18 I will show you a document we have</p> <p>19 marked as Exhibit 622. If you can tell me what</p> <p>20 that document is, sir.</p> <p>21 A. It looks like my declaration, pursuant</p> <p>22 to Rule 30(b)(6).</p> <p>23 Q. You have mentioned in the second</p> <p>24 paragraph that you specialize in derivatives.</p> <p>25 Do you see that?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. Yes.</p> <p>3 Q. Can you tell me what -- the</p> <p>4 derivatives that Barclays acquired in the</p> <p>5 transaction that's the subject of this, did that</p> <p>6 include any futures contracts?</p> <p>7 MR. MORAG: Object to the form.</p> <p>8 A. It did, it did include the acquisition</p> <p>9 of the futures business.</p> <p>10 Q. And did that futures business include</p> <p>11 any positions?</p> <p>12 A. I don't know. I don't know what</p> <p>13 positions were actually on. We didn't handle</p> <p>14 the futures side of the arrangements. Those</p> <p>15 were handled by S&amp;C, by and large.</p> <p>16 Q. Did you have an understanding whether</p> <p>17 any futures contracts were included in the</p> <p>18 acquisition by Barclays?</p> <p>19 MR. MORAG: Object to the form.</p> <p>20 A. Yes. I believe, my understanding was</p> <p>21 that there were futures positions and listed</p> <p>22 options positions.</p> <p>23 Q. And what kinds of futures and options</p> <p>24 contracts did you understand Barclays to be</p> <p>25 acquiring in this transaction?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 A. I'm not sure I understand the</p> <p>3 question, what type of futures options.</p> <p>4 Q. Were they exchange-traded or over the</p> <p>5 counter?</p> <p>6 A. Yes, yes, listed. Not over the</p> <p>7 counter. My understanding was the</p> <p>8 over-the-counter business was excluded.</p> <p>9 Q. Did you have an understanding how</p> <p>10 Lehman organized its derivatives business?</p> <p>11 A. No.</p> <p>12 Q. When did you become involved in the</p> <p>13 transaction?</p> <p>14 A. My recollection was sometime around</p> <p>15 the 15th of September, maybe the 14th of</p> <p>16 September.</p> <p>17 Q. And what was your role?</p> <p>18 MR. MORAG: Time frame? At the start?</p> <p>19 Q. Starting on the 15th.</p> <p>20 A. On the 15th, going forward, I was both</p> <p>21 dealing with certain of the deal issues relating</p> <p>22 to the regulated character of the transaction,</p> <p>23 and also dealing with certain regulators on</p> <p>24 issues that needed to be addressed if the deal</p> <p>25 was going to be closed.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 That's primarily what I was doing, but</p> <p>3 also the clearinghouse issues that arose and the</p> <p>4 JP Morgan issues that arose, I had some</p> <p>5 involvement in, as events unfolded between then</p> <p>6 and the 22nd.</p> <p>7 Q. When you say the clearinghouse, are</p> <p>8 you referring to DTCC?</p> <p>9 A. And OCC.</p> <p>10 Q. What regulators did you deal with?</p> <p>11 A. I spoke with the SEC. I did have one</p> <p>12 or two conversations with staff at FINRA, and I</p> <p>13 had a couple of conversations with folks at the</p> <p>14 Federal Reserve.</p> <p>15 Q. With whom did you deal at the SEC?</p> <p>16 A. I had conversations with Mike</p> <p>17 Macchiaroli, Randall Roy, and Dan Gallagher.</p> <p>18 Q. What were the subject of your</p> <p>19 conversations with Mike Macchiaroli?</p> <p>20 A. There were a couple of issues. The</p> <p>21 principal issue related to the fact that Lehman</p> <p>22 operated under a different -- was registered</p> <p>23 under a different broker dealer regulatory</p> <p>24 regime with different capital requirements than</p> <p>25 Barclays, and there were questions about how</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 capital would be computed in the face of the</p> <p>3 combination of those two entities.</p> <p>4 <b>Q. What was the outcome of those</b></p> <p>5 <b>discussions?</b></p> <p>6 A. The outcome of those discussions was</p> <p>7 that the SEC confirmed that following the</p> <p>8 combination -- it is a little bit complicated,</p> <p>9 but in essence, that the surviving entity could</p> <p>10 take advantage of the regulatory status that the</p> <p>11 LBI broker dealer enjoyed with potential</p> <p>12 accommodations being made for systems</p> <p>13 integration, things like that. Because you have</p> <p>14 systems to compute capital and they were</p> <p>15 disparate systems.</p> <p>16 <b>Q. Notwithstanding Barclays' acquisition</b></p> <p>17 <b>of the North American business, the acquired</b></p> <p>18 <b>business would remain subject to the previous</b></p> <p>19 <b>regulatory capital regime?</b></p> <p>20 A. It would actually be sort of a</p> <p>21 combination of the two, but would ultimately, to</p> <p>22 the extent that the systems were able to</p> <p>23 consolidate, it could be operated under the same</p> <p>24 regime, yes.</p> <p>25 <b>Q. Did you have any discussions with</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>Mr. Macchiaroli specifically about the amount of</b></p> <p>3 <b>capital that would be required to operate the</b></p> <p>4 <b>acquired business?</b></p> <p>5 A. The amount of capital? There was a</p> <p>6 conversation about whether or not there would be</p> <p>7 combined tentative net capital, I believe, of</p> <p>8 5 billion dollars, and I believe the view was</p> <p>9 that there would be adequate tentative net</p> <p>10 capital.</p> <p>11 <b>Q. What was your understanding as to what</b></p> <p>12 <b>tentative net capital meant?</b></p> <p>13 A. It's a calculation before certain</p> <p>14 deductions for various positions and associated</p> <p>15 risks of a market credit nature. I should add I</p> <p>16 am not an expert on capital computations.</p> <p>17 <b>Q. Is what you are describing an</b></p> <p>18 <b>understanding that was reached between Barclays</b></p> <p>19 <b>and the SEC, that there would be a tentative net</b></p> <p>20 <b>capital of 5 billion dollars following the</b></p> <p>21 <b>acquisition to support the acquired business?</b></p> <p>22 A. I don't recall it being an express</p> <p>23 condition or agreement. And I think, I think</p> <p>24 people possibly operated under the assumption</p> <p>25 that there would be adequate tentative net</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 capital as a result of the combination.</p> <p>3 <b>Q. Do you know whether any such</b></p> <p>4 <b>understanding was documented?</b></p> <p>5 A. There was language -- there was an</p> <p>6 undertaking, which I don't recall the terms of,</p> <p>7 there was an undertaking that was provided by</p> <p>8 Barclays to the SEC, because there hadn't</p> <p>9 been -- usually you go through a formal process</p> <p>10 in order to become part of this regime, and</p> <p>11 there was a document. I don't recall its</p> <p>12 contents sitting here now.</p> <p>13 <b>Q. Who prepared that undertaking?</b></p> <p>14 A. That was I believe prepared at</p> <p>15 Barclays.</p> <p>16 <b>Q. Who is the person on the Barclays side</b></p> <p>17 <b>who was responsible for the net capital</b></p> <p>18 <b>discussions with the SEC?</b></p> <p>19 A. That, I mean, I don't know. I, I</p> <p>20 believe, corresponded with Jonathan Hughes and</p> <p>21 Alan Kaplan on those issues. I don't know who</p> <p>22 they may have coordinated with internally.</p> <p>23 <b>Q. Was there any discussion with Mike</b></p> <p>24 <b>Macchiaroli about where Barclays would get the</b></p> <p>25 <b>5 billion tentative net capital?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 MR. MORAG: Object to the form.</p> <p>3 A. No. Not that I recall, I should say.</p> <p>4 <b>Q. Was there any discussion with Mike</b></p> <p>5 <b>Macchiaroli as to whether the acquired business</b></p> <p>6 <b>itself would be a source of the capital needed</b></p> <p>7 <b>to support its future operations?</b></p> <p>8 A. Could you ask the question again.</p> <p>9 <b>Q. Yes. Was there any discussion with</b></p> <p>10 <b>Mike Macchiaroli about whether Barclays would</b></p> <p>11 <b>obtain the capital to support the business from</b></p> <p>12 <b>the business itself?</b></p> <p>13 A. I don't recall discussing with him</p> <p>14 what the source of the tentative net capital</p> <p>15 would be.</p> <p>16 <b>Q. Was there any discussion with Mike</b></p> <p>17 <b>Macchiaroli about day one gain, profit that</b></p> <p>18 <b>Barclays expected to make on the acquisition?</b></p> <p>19 MR. MORAG: Objection, foundation,</p> <p>20 lack of foundation.</p> <p>21 A. I don't recall having a conversation</p> <p>22 with Mike Macchiaroli about that.</p> <p>23 <b>Q. Do you recall any such conversation</b></p> <p>24 <b>with anyone at the SEC, including Randall Roy or</b></p> <p>25 <b>Dan Gallagher?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2           A. Remind me again, any conversation</p> <p>3 regarding --</p> <p>4           <b>Q. About Barclays anticipating making a</b></p> <p>5 <b>day one gain or profit on the acquisition of the</b></p> <p>6 <b>business.</b></p> <p>7           A. I don't recall participating in or</p> <p>8 being aware. It doesn't mean that there weren't</p> <p>9 conversations. I was not a party to them.</p> <p>10           <b>Q. Were you aware at any point that</b></p> <p>11 <b>Barclays did anticipate a day one gain or profit</b></p> <p>12 <b>on the acquisition of the Lehman business?</b></p> <p>13           MR. MORAG: Objection to form and</p> <p>14 foundation.</p> <p>15           A. I don't recall having conversations</p> <p>16 about the accounting treatment for the</p> <p>17 transaction. So I couldn't say.</p> <p>18           <b>Q. And leaving aside accounting</b></p> <p>19 <b>treatment, in terms of economic gain, were you</b></p> <p>20 <b>ever aware that Barclays was anticipating an</b></p> <p>21 <b>economic gain from the transaction?</b></p> <p>22           MR. MORAG: Objection to the form.</p> <p>23 Time frame.</p> <p>24           A. I'm not sure what you mean by an</p> <p>25 economic gain. I do know that they wouldn't</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2 have done this transaction if they didn't think</p> <p>3 that it would have been profitable for them to</p> <p>4 do over the long term. I think they were making</p> <p>5 a major bet on their North American investment</p> <p>6 banking activities and taking a significant risk</p> <p>7 at the same time.</p> <p>8           <b>Q. But you have no further knowledge</b></p> <p>9 <b>beyond that general understanding? And to help</b></p> <p>10 <b>you, I am specifically talking not about a</b></p> <p>11 <b>long-term gain or the expected performance of</b></p> <p>12 <b>the business after the closing, I'm talking</b></p> <p>13 <b>about whether Barclays anticipated that the</b></p> <p>14 <b>total economic value of what it was getting in</b></p> <p>15 <b>the deal would exceed what it was paying, such</b></p> <p>16 <b>that it would record an immediate economic value</b></p> <p>17 <b>in favor of Barclays at the closing?</b></p> <p>18           A. No, but I don't think my involvement</p> <p>19 in the transaction would have necessarily</p> <p>20 positioned me to be part to those discussions.</p> <p>21 If they were to be had, they probably would have</p> <p>22 been with other people.</p> <p>23           <b>Q. Certainly that was not a subject that</b></p> <p>24 <b>was discussed in any of your discussions with</b></p> <p>25 <b>the regulators?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2           A. I don't recall having a conversation</p> <p>3 with the regulators regarding the details of</p> <p>4 the -- you know, how the transaction would be</p> <p>5 reflected on Barclays' books and records. It</p> <p>6 was not part of my role in the transaction, I</p> <p>7 guess.</p> <p>8           <b>Q. Can you tell me any other subjects</b></p> <p>9 <b>that you discussed with Mike Macchiaroli?</b></p> <p>10           MR. MORAG: Please try to keep your</p> <p>11 voice up for the court reporter.</p> <p>12           A. Conversations with Mike Macchiaroli.</p> <p>13 I'm sorry. I'm trying to remember certain</p> <p>14 subjects and who I would have spoken with about</p> <p>15 them.</p> <p>16           I did have conversations with Mike</p> <p>17 Macchiaroli about sort of generally how things</p> <p>18 were going, because he was, from what I</p> <p>19 understood, the -- at Lehman presiding over sort</p> <p>20 of developments there. And we might have had --</p> <p>21 we had conversations from time to time, and we</p> <p>22 may have spoken about how things looked from his</p> <p>23 perspective, and while I don't remember the</p> <p>24 specifics of the exchange that we had, I do</p> <p>25 remember coming away from the conversation with</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2 Mike, was, you know, not committal, and I think</p> <p>3 he was struggling to stay on top of all the</p> <p>4 information that he needed to figure out sort of</p> <p>5 where the books and records were, but I do</p> <p>6 remember coming away with the impression that he</p> <p>7 was optimistic that the assets there were going</p> <p>8 to be adequate for covering the customer claims,</p> <p>9 which was good, because everybody was hoping</p> <p>10 that there weren't going to be any obstacles.</p> <p>11           I may have had other conversations,</p> <p>12 but I can't recall other conversations that I</p> <p>13 necessarily had with Mike.</p> <p>14           <b>Q. Any other conversations you recall</b></p> <p>15 <b>with anyone else at the SEC?</b></p> <p>16           A. Yes. I did have a conversation with</p> <p>17 Dan Gallagher at one point which related to an</p> <p>18 issue that I was not directly negotiating about</p> <p>19 the PIM accounts and what was coming across and</p> <p>20 what was not, and I had a conversation with</p> <p>21 Randall Roy about some additional relief that</p> <p>22 Barclays -- that Barclays identified relating to</p> <p>23 the Fed's request that Barclays step into its</p> <p>24 shoes in the repos that were outstanding with</p> <p>25 the Fed, and I can't remember, I can't remember</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 for sure all the people at the SEC who I might</p> <p>3 have spoke with, but we did request that the SEC</p> <p>4 agree to waive certain rights that they might</p> <p>5 otherwise have been entitled to exercise that</p> <p>6 might have prevented Barclays from exercising</p> <p>7 its rights under the repo should the deal not go</p> <p>8 through. But I honestly can't remember the</p> <p>9 details of that. We did ultimately get that</p> <p>10 assurance.</p> <p>11 And I had a conversation with Bob</p> <p>12 Colby, who contacted me because there was a</p> <p>13 miscommunication among the representatives of</p> <p>14 the clearing organization, OCC, and the SEC, and</p> <p>15 there was some suggestion that the SEC was</p> <p>16 imposing a requirement on Lehman that would have</p> <p>17 prevented Lehman from taking the accounts at</p> <p>18 OCC -- I am sorry, I mean Barclays, take the</p> <p>19 accounts under the TAA, and I spoke to him</p> <p>20 regarding that, and it took a little bit of</p> <p>21 time, but it was identified as a</p> <p>22 misunderstanding on the part of outside counsel</p> <p>23 to OCC. So that issue disappeared.</p> <p>24 <b>Q. Besides that misunderstanding and</b></p> <p>25 <b>besides the PIM accounts and the repo and</b> TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>capital requirements, any other subjects you</b></p> <p>3 <b>recall discussing with the SEC?</b></p> <p>4 A. I may have had a number of others. I</p> <p>5 honestly just don't remember them, sitting here</p> <p>6 now.</p> <p>7 You know, I can't remember how far my</p> <p>8 conversations went with this, but one of the</p> <p>9 questions presented by the transaction was how</p> <p>10 the Lehman business would be acquired and what</p> <p>11 entity, and there are different regulatory</p> <p>12 consequences if it is acquired by a going broker</p> <p>13 dealer that is already registered than if it was</p> <p>14 acquired by a new entity that doesn't enjoy a</p> <p>15 registration.</p> <p>16 And there was thinking going on as to</p> <p>17 the various pros and cons to how the transaction</p> <p>18 was to be booked -- what entity might take it,</p> <p>19 and I recall spending some time trying to get</p> <p>20 the approval to be able to close the deal if we</p> <p>21 needed to with the Lehman business being</p> <p>22 acquired by an affiliate or subsidiary of the</p> <p>23 registered broker dealer, rather than the</p> <p>24 registered brother teller itself.</p> <p>25 That ultimately was not necessary, but TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 I believe I spent some time dealing with that</p> <p>3 issue.</p> <p>4 <b>Q. Do you know which entity acquired the</b></p> <p>5 <b>PIM business?</b></p> <p>6 A. Do I know which entity acquired the</p> <p>7 PIM business. I had thought -- I thought or</p> <p>8 assumed that it was Barclays Capital, Inc.</p> <p>9 <b>Q. Can you tell me what is or was the PIM</b></p> <p>10 <b>business?</b></p> <p>11 MR. HUME: Object to the form.</p> <p>12 A. I believe it is a business in which</p> <p>13 investment management services are provided by</p> <p>14 Lehman brokers to customers. I don't know more</p> <p>15 than that. I don't know the business plan, I</p> <p>16 don't know the scope of it.</p> <p>17 <b>Q. Did you understand that it was part of</b></p> <p>18 <b>the investment management business, the</b></p> <p>19 <b>investment management division?</b></p> <p>20 A. I don't know structurally how it fit</p> <p>21 into Lehman's organization.</p> <p>22 <b>Q. Do you know whether the customers of</b></p> <p>23 <b>the PIM business did any trading in derivatives?</b></p> <p>24 A. I don't -- I didn't have specific</p> <p>25 knowledge as to whether they did or didn't. I TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 assume it would be possible that they did.</p> <p>3 <b>Q. In paragraph 3 of your declaration,</b></p> <p>4 <b>you note the basis for your declaration in the</b></p> <p>5 <b>first sentence.</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And you refer to the recollection of</b></p> <p>8 <b>your partners. Can you tell me to whom you are</b></p> <p>9 <b>referring there?</b></p> <p>10 A. It would have included Mr. Davis, and</p> <p>11 Lindsee Granfield, Duane McLaughlin, David</p> <p>12 Leinwand, L-E-I-N-W-A-N-D.</p> <p>13 Dana Fleischman, Vic Lewkow, Boaz</p> <p>14 Morag. I feel like I am forgetting somebody.</p> <p>15 MR. MORAG: Washington?</p> <p>16 A. I am sorry, and Mike Mazzuchi, a</p> <p>17 partner in the Washington office. Thank you.</p> <p>18 He participated by phone, so I didn't remember</p> <p>19 him.</p> <p>20 <b>Q. Everyone else participated in person?</b></p> <p>21 A. Not necessarily. In some cases -- for</p> <p>22 example, I think Duane McLaughlin was out of</p> <p>23 town and may have called in.</p> <p>24 <b>Q. How did you go about collecting the</b></p> <p>25 <b>recollection of these partners?</b> TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2           A. Talking about the 30(b)(6) issues and</p> <p>3 discussing our recollection of them.</p> <p>4           <b>Q. Can you tell me when that happened?</b></p> <p>5           MR. HUME: I am just going to object,</p> <p>6 because I think the record is unclear</p> <p>7 whether your question is about recollections</p> <p>8 reflected in the affidavit versus 30(b)(6)</p> <p>9 prep.</p> <p>10          <b>Q. Did you distinguish between preparing,</b></p> <p>11 <b>getting your recollections for your declaration</b></p> <p>12 <b>and your recollections for your deposition, or</b></p> <p>13 <b>was that all part of the same process where you</b></p> <p>14 <b>were preparing to testify either by way of</b></p> <p>15 <b>declaration or by way of deposition?</b></p> <p>16          A. Well, obviously the discussions were</p> <p>17 held earlier with respect to the declaration,</p> <p>18 sometime during the week leading up to the</p> <p>19 completion of the declaration. I don't recall</p> <p>20 whether Duane McLaughlin or Dana Fleischman</p> <p>21 participated in those earlier discussions.</p> <p>22          <b>Q. They did, however, participate in</b></p> <p>23 <b>another round of similar discussions --</b></p> <p>24          A. After the declaration.</p> <p>25          <b>Q. -- after the declaration.</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           <b>And when was that? Was that just in</b></p> <p>3 <b>the last week?</b></p> <p>4           A. The week before, primarily. And</p> <p>5 yesterday, but only a small subset.</p> <p>6           <b>Q. And how did you actually get the</b></p> <p>7 <b>recollection from the partners? How did you</b></p> <p>8 <b>find out what they remembered?</b></p> <p>9           A. I'm not quite sure I understand the</p> <p>10 question. We talked amongst ourselves about the</p> <p>11 events and our recollections of them covered by</p> <p>12 the 30(b)(6).</p> <p>13          <b>Q. Did any of your partners remember</b></p> <p>14 <b>things that you did not remember?</b></p> <p>15          A. I would say yes, we all had different</p> <p>16 recollections.</p> <p>17          <b>Q. Now, you note in your declaration,</b></p> <p>18 <b>paragraph 3, you say, "Where indicated, the</b></p> <p>19 <b>recollection of my partners." Do you see that?</b></p> <p>20 <b>It's on the second line of paragraph 3.</b></p> <p>21          A. Um-hm. I do see that.</p> <p>22          <b>Q. Is there any recollection that any of</b></p> <p>23 <b>your partners gave you that you did not set</b></p> <p>24 <b>forth in this declaration?</b></p> <p>25          MR. MORAG: Objection to form and</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2           objection on the attorney/client privilege</p> <p>3 and work product.</p> <p>4           MR. MAGUIRE: Are you objecting or</p> <p>5 directing the witness not to answer?</p> <p>6           MR. MORAG: If I understand your</p> <p>7 question correctly, I'm directing him not to</p> <p>8 answer.</p> <p>9           <b>Q. In paragraph 4, sir, you refer to the</b></p> <p>10 <b>removal of certain language. Do you see that?</b></p> <p>11          A. Yes.</p> <p>12          <b>Q. And you note specifically the draft</b></p> <p>13 <b>that it was removed from.</b></p> <p>14          A. I am sorry.</p> <p>15          <b>Q. You refer to language -- you refer to</b></p> <p>16 <b>a draft that contained that language?</b></p> <p>17          A. Yes.</p> <p>18          <b>Q. And the draft language that you are</b></p> <p>19 <b>referring to, you set that forth in paragraph 5;</b></p> <p>20 <b>is that correct?</b></p> <p>21          A. I am sorry, in paragraph 4, I don't</p> <p>22 see a reference to paragraph 5.</p> <p>23          <b>Q. That's correct. In paragraph 4, you</b></p> <p>24 <b>refer to the removal of certain language.</b></p> <p>25          A. Yes. I am sorry. You are referring</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           to paragraph 5 of the declaration, not</p> <p>3 paragraph -- OK, could you repeat the question.</p> <p>4           <b>Q. I just want to make sure we are on the</b></p> <p>5 <b>same page here. You're -- when you talk about</b></p> <p>6 <b>the certain language in paragraph 4, you are</b></p> <p>7 <b>referring to the language that you set forth in</b></p> <p>8 <b>quotes in paragraph 5 of your declaration?</b></p> <p>9           A. Yes. This is a reference to the</p> <p>10 language in 1D.</p> <p>11          MR. MORAG: Let me note for the record</p> <p>12 that the quoted language in paragraph 5 does</p> <p>13 have ellipses and was not intended to be a</p> <p>14 full quote.</p> <p>15          <b>Q. As a matter of reference, we are</b></p> <p>16 <b>talking about the same language?</b></p> <p>17          A. Yes.</p> <p>18          <b>Q. At the end of paragraph 4, you say</b></p> <p>19 <b>that the trustee's position is incorrect, and</b></p> <p>20 <b>you say, "There was to my or my partners'</b></p> <p>21 <b>knowledge never any such agreement or</b></p> <p>22 <b>discussion." Do you see that?</b></p> <p>23          A. Yes.</p> <p>24          <b>Q. Sir, was there any discussion, to your</b></p> <p>25 <b>knowledge, or to the knowledge of your partners,</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>



**ROSEN**  
**with anyone, about the removal of the language that you discuss in paragraphs 4 and 5 of your declaration?**

MR. MORAG: Object to the form, and to the extent -- you can answer to the extent you're going to talk about discussion with anyone in the Lehman side.

THE WITNESS: Yeah, I know, it's fine.

A. The only -- I -- the answer is, I don't recall the specific content of the discussion. But in response to that language, there was -- there was additional language that we drafted that was provided and identified to Lehman's attorneys explaining that this language was needed in light of the changes that had been made to 1D.

**Q. And is that, sir, your recollection or the recollection of one of your partners?**

A. Well, we gave -- it is our collective recollection that we drafted the additional language, and it was our recollection that we provided that in the form of a handwritten markup, and I don't recall, and I'm not sure any of my partners specifically recall, who actually  
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**ROSEN**

handed the markup over to the Lehman side, but it was provided to the Lehman side in the form of handwritten comments.

**Q. And the handwritten comments, are those the ones that included the parenthetical "property held to secure"?**

A. Yes, yes.

**Q. Have you seen those handwritten comments?**

MR. MORAG: Time frame?

**Q. At any time?**

A. You mean including at the time that they were drafted?

**Q. Yes.**

A. The recollection of the group was that I drafted them.

**Q. Do you recall actually what you did with those handwritten notes?**

A. I would have given them to one of my partners.

**Q. Have you seen them since the weekend when those notes were prepared?**

A. No, no, I have not.

**Q. Do you know whether they exist today?**  
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**ROSEN**

A. I don't know.

**Q. Do you know whether, in fact, you did give them to somebody or what you did with those handwritten notes?**

A. My recollection is that I handed them to one of my partners.

**Q. Do you know which partner you handed them to?**

A. I don't recall specifically.

**Q. Do you have a general recollection?**

A. I have a general recollection, it would have been Bob Davis or Duane McLaughlin or David Leinwand. It would have been one of those three.

**Q. Have you asked your partners for that draft?**

A. No, I haven't.

**Q. Do you know whether anyone has attempted to locate that draft?**

A. I don't know.

**Q. Did you talk to anyone on the Lehman side concerning the insertion of the parenthetical that you were proposing in that draft?**

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**ROSEN**

A. Did I personally speak to anyone on the Lehman side? Well, it depends upon -- I am sorry, I personally did not speak to anyone on the Lehman side.

**Q. Do you know whether any of your partners spoke to anyone on the Lehman side about including that parenthetical in the clarification letter?**

A. Our understanding, our recollection, Cleary's recollection, is that it would have been -- it would have been identified as a change to be made to the agreement, to the -- whoever the lawyer was on the -- representing Lehman that was handling the document.

**Q. And do you know who the lawyer on the Lehman side was to whom it was handed?**

A. I don't know. I don't know.

**Q. And the draft that was handed to that Lehman lawyer, did it have any other handwritten changes?**

A. I'm trying to remember. There were two other changes that I recall, and you will have to forgive me for being a little bit unclear about the timing or the sequencing, but

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<p>1 ROSEN</p> <p>2 I believe there were two other changes.</p> <p>3 One, there was language -- let me back</p> <p>4 up and ask you this question and get</p> <p>5 clarification. Are you asking me just about the</p> <p>6 language that's described in 1D, or are you</p> <p>7 asking about other changes to the clarification</p> <p>8 letter?</p> <p>9 <b>Q. Let's get our time frame and context</b></p> <p>10 <b>together first. I'm talking to you specifically</b></p> <p>11 <b>about the draft that I understand from your</b></p> <p>12 <b>testimony in which you, in handwriting, inserted</b></p> <p>13 <b>the parenthetical that includes the words "and</b></p> <p>14 <b>property held to secure."</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. And the question is whether that draft</b></p> <p>17 <b>included any other proposed changes.</b></p> <p>18 A. I'd have to go back and look at the</p> <p>19 sequence of the drafts. There were two other</p> <p>20 changes that may or may not have been</p> <p>21 simultaneous. I don't know. They may have been</p> <p>22 given sequentially but have been processed by</p> <p>23 the other side as part of one turn. I don't, I</p> <p>24 don't recall.</p> <p>25 But there was a change in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 clarification of language concerning 15c3-3,</p> <p>3 provision to add the word "or value" at the end</p> <p>4 of a sentence, and there was a sentence to</p> <p>5 clarify what had been agreed as part of the</p> <p>6 resolution of issues with DTC, that the</p> <p>7 liabilities to DTC associated with Lehman were</p> <p>8 excluded liabilities under the APA.</p> <p>9 <b>Q. I am going to ask you again</b></p> <p>10 <b>specifically about the draft in which you</b></p> <p>11 <b>inserted that parenthetical "property held to</b></p> <p>12 <b>secure."</b></p> <p>13 <b>With respect to that draft, can you</b></p> <p>14 <b>tell me what, if anything, was said about anyone</b></p> <p>15 <b>on the Barclays side or the Cleary side to the</b></p> <p>16 <b>person on the Lehman side who received that</b></p> <p>17 <b>draft?</b></p> <p>18 A. No, I can't give you verbatim what</p> <p>19 would have been said, but what would ordinarily</p> <p>20 happen in that circumstance is that the changes</p> <p>21 would be identified to the other side so they</p> <p>22 could understand what was being provided to</p> <p>23 them.</p> <p>24 <b>Q. And when you say the changes would be</b></p> <p>25 <b>identified, the other side would be shown what</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>the proposed language was?</b></p> <p>3 A. Yes. We did not control the</p> <p>4 documents, so Cleary did not input those</p> <p>5 changes. Those changes were put into whatever</p> <p>6 revised draft emerged in whatever time it</p> <p>7 emerged by the Lehman's counsel.</p> <p>8 <b>Q. Other than pointing out the changed</b></p> <p>9 <b>language, do you know what, if anything, was</b></p> <p>10 <b>said to Lehman about the addition of that</b></p> <p>11 <b>parenthetical?</b></p> <p>12 A. No. Not at that time.</p> <p>13 <b>Q. When you say not at that time, is</b></p> <p>14 <b>there some other time that there was a</b></p> <p>15 <b>discussion --</b></p> <p>16 A. Not about that specific parenthetical</p> <p>17 but about the subject, there were a lot of --</p> <p>18 there were exchanges of a number of</p> <p>19 communications and documents that I think were</p> <p>20 addressed to the same issue that were exchanged.</p> <p>21 <b>Q. I would like to go through some of</b></p> <p>22 <b>them, and the first one I'd like to take is the</b></p> <p>23 <b>one that you refer to in paragraph 4. And</b></p> <p>24 <b>that's the draft language that you have put</b></p> <p>25 <b>forth in quotes in paragraph 5.</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>And if we get our sequence right,</b></p> <p>3 <b>there was a draft that included this language</b></p> <p>4 <b>which has an express reference to margin, and</b></p> <p>5 <b>that's the language you have set forth in</b></p> <p>6 <b>paragraph 5, right?</b></p> <p>7 A. I am sorry, could you repeat the</p> <p>8 question about this language.</p> <p>9 <b>Q. Yes. Let's get our context right</b></p> <p>10 <b>first.</b></p> <p>11 <b>I invite you to look at paragraph 5</b></p> <p>12 <b>and look at the draft language that you have,</b></p> <p>13 <b>starting with the quotes, "any and all</b></p> <p>14 <b>property."</b></p> <p>15 A. I am sorry, where are you in</p> <p>16 paragraph 5?</p> <p>17 <b>Q. About midway down, the second full</b></p> <p>18 <b>sentence: "The draft language accomplished this</b></p> <p>19 <b>by making clear that the definition of excluded</b></p> <p>20 <b>assets did not include 'any and all property,'"</b></p> <p>21 <b>and it continues.</b></p> <p>22 A. Correct.</p> <p>23 <b>Q. So for my next couple of questions, I</b></p> <p>24 <b>am going to be asking you specifically about</b></p> <p>25 <b>that language and the draft in which that</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2 <b>language was deleted or crossed out. Are you</b></p> <p>3 <b>with me?</b></p> <p>4       A. Yes.</p> <p>5       <b>Q. Did you see the draft in which that</b></p> <p>6 <b>language was crossed out?</b></p> <p>7       MR. MORAG: Object to the form. I</p> <p>8       also object to the representation that all</p> <p>9       of the language was crossed out. If you</p> <p>10       want to show him the actual draft, it may be</p> <p>11       more appropriate.</p> <p>12       A. I saw a draft which included a number</p> <p>13       of changes in which language was moved to other</p> <p>14       sections and modifications were made, and those</p> <p>15       modifications included modifications to this</p> <p>16       language. Yes, I did.</p> <p>17       <b>Q. And you refer to this as the removal</b></p> <p>18 <b>of certain language in paragraph 4?</b></p> <p>19       A. Well, I would -- without mincing</p> <p>20       words, I would say that there was a draft</p> <p>21       prepared that dealt with some of these issues in</p> <p>22       other ways, in other provisions of the</p> <p>23       agreement.</p> <p>24       <b>Q. Did you see the draft in which the</b></p> <p>25 <b>language you quote in paragraph 5 was removed?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2       A. Yes. Well, subject to the caveat as</p> <p>3       to what you mean by remove.</p> <p>4       <b>Q. What I mean by removed is the language</b></p> <p>5 <b>that you quote was deleted, it was marked as</b></p> <p>6 <b>deleted?</b></p> <p>7       MR. MORAG: Object to the form.</p> <p>8       <b>Q. Did you see such a draft?</b></p> <p>9       A. I saw a draft in which this language</p> <p>10       did not appear in this form.</p> <p>11       <b>Q. Did this language appear in any other</b></p> <p>12 <b>form in that draft?</b></p> <p>13       A. Some of it did and obviously some of</p> <p>14       it didn't.</p> <p>15       <b>Q. And what part of it did not?</b></p> <p>16       A. I'd have to -- I would have to look at</p> <p>17       the particular draft of the agreement to answer</p> <p>18       that question. I can't recall with accurate --</p> <p>19       with accuracy what the other changes were that</p> <p>20       were made at the same time as this change was</p> <p>21       made.</p> <p>22       <b>Q. Once you saw that draft, did you</b></p> <p>23 <b>personally have any discussions with anyone on</b></p> <p>24 <b>the Lehman side concerning the removal of any of</b></p> <p>25 <b>this language?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2       A. As I said earlier, we prepared</p> <p>3       language, I prepared language, and that language</p> <p>4       was provided to Lehman, and they would have</p> <p>5       identified to Lehman that this language was now</p> <p>6       necessary.</p> <p>7       <b>Q. Yes. And I understand that testimony.</b></p> <p>8 <b>I was just asking whether there was any other</b></p> <p>9 <b>conversation that you recalled.</b></p> <p>10       A. No, not that I was -- not that I am</p> <p>11       aware of.</p> <p>12       <b>Q. Are you aware of any discussion</b></p> <p>13 <b>involving any of your partners and anyone on the</b></p> <p>14 <b>Lehman side --</b></p> <p>15       A. Actually, hang on just a second. Hang</p> <p>16       on just a second.</p> <p>17       I need to see the clarification</p> <p>18       agreement in which this language appears,</p> <p>19       because this language deals with a number of</p> <p>20       issues that were in flux at the time, some of</p> <p>21       which were the subject of discussions.</p> <p>22       There was language that addresses</p> <p>23       15c3-3, as I said earlier, that also addressed</p> <p>24       the DTC situation which had changed. And so --</p> <p>25       and there were conversations obviously among the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2       parties about a number of issues that are</p> <p>3       addressed in this language.</p> <p>4       But as I said, with respect</p> <p>5       specifically to the language that was added in</p> <p>6       response in section 1(a)(ii)(C), the</p> <p>7       conversation would have been in connection with</p> <p>8       the transmittal of that language to the Lehman</p> <p>9       side.</p> <p>10       <b>Q. And you don't recall any other</b></p> <p>11 <b>communication with the Lehman side concerning</b></p> <p>12 <b>the removal of this language beyond what you</b></p> <p>13 <b>have told us?</b></p> <p>14       MR. HUME: Object to the form.</p> <p>15       MR. MORAG: Same objection.</p> <p>16       A. I think the -- other than the language</p> <p>17       itself, other than the changes that were</p> <p>18       proffered by Cleary having received a revised</p> <p>19       draft and discussions that I suspect we are</p> <p>20       going to cover relating to 15c3-3, and the</p> <p>21       discussions relating to DTCC, there were no</p> <p>22       specific conversations that we had and none that</p> <p>23       we thought were necessary, because this was part</p> <p>24       of the deal.</p> <p>25       <b>Q. Did you have any discussions with</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

anyone on the Lehman side concerning margin?

MR. MORAG: Time frame?

**Q. Over the weekend prior to the closing?**

MR. MORAG: Objection to the form.

Objection to the term "margin."

A. Well, there were conversations -- there were e-mail communications in which I was copied and Lehman's people were copied about what was going to happen to the margin at OCC. Not just the margin but the property associated with those accounts, yes, in which OCC said, consistent with the order in their -- what was then the draft TAA that they had prepared, was going to be transferred to Barclays.

**Q. Any discussions about margin with anyone on the Lehman side other than in connection with the OCC?**

MR. MORAG: Objection to the form.

A. There was an e-mail to me copying Lehman, I believe, about the transfer of a certain amount of margin -- I can't remember exactly what it was -- in which Lehman was copied. I think that e-mail was from Jim McDaniel. I think the trustee's representatives  
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ROSEN

A. DTC and OCC.

**Q. Do you recall any discussion concerning margin at DTCC?**

A. Discussing margin at DTCC? Well, there were discussions about the DTC accounts and how they were going to be handled, and those accounts would have included both proprietary positions, customers' positions, positions that may have been margined, and so indirectly, all of those discussions with DTC potentially included discussions about margin, to the extent that that was relevant.

**Q. Any express reference to margin? Margin coming up in any express way in any conversation with DTC that you remember?**

A. Well, in the sense that to the extent that anything constituted margin that was in there and the discussions covered those accounts, yes. But I don't remember us specifically singling out margin as a topic.

**Q. Do you recall any discussions about margin at any foreign exchanges or clearinghouses?**

A. Again, I don't recall conversations  
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were also copied on that.

**Q. And that's in connection -- Mr. McDaniel represented the OCC?**

A. The OCC.

**Q. Yes.**

**Other than with respect to the OCC, any discussions that you had concerning margin?**

A. Well, verbal discussions?

**Q. Yes.**

A. I believe that there were conference calls about the clearinghouses. I think they may have been scheduled for Saturday or Sunday, and the arrangements that were going to be made and the transfers, and I believe that representatives from Lehman were on those calls. I cannot recall specifically, either the specific discussions or exactly when they occurred.

And it would have -- I think it probably included discussions about how things were going to be done in the transfer of margin and the like.

**Q. What clearinghouses are you referring to?**

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with foreign clearinghouses, but to the extent that we discussed the accounts that were going over and the credit support for them, to the extent that as part of the business that was being transferred, there were positions in those accounts, they would have been covered by the conversations.

**Q. And do you recall any specific such conversations?**

A. Well, there were negotiations between the parties about the business, so if you're saying that I'm taking the FCM business and if that business includes positions that are traded on foreign markets, then by definition you're talking about them as part of the same thing. If you are taking that business and customer and other deposits associated with them and assets associated with that business, then yes, you are talking about the margin indirectly, although you may not be specifically singling it out.

**Q. That's what I want to do. I want to single it out.**

**Do you recall a specific singling out, a specific mention of either margin or guarantee**  
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<p>1                   <b>ROSEN</b></p> <p>2   <b>fund deposit in any conversations other than in</b></p> <p>3   <b>connection with the OCC?</b></p> <p>4       MR. HUME: Objection, asked and</p> <p>5       answered.</p> <p>6       A. I think I would say that the</p> <p>7       discussions about the assets that were being</p> <p>8       transferred in connection with the business and</p> <p>9       any deposits is a discussion about guarantee</p> <p>10      fund deposits and margin at those clearing</p> <p>11      organizations.</p> <p>12      <b>Q. I understand that testimony. The</b></p> <p>13      <b>question is, do you have a recollection or have</b></p> <p>14      <b>you heard from any of your partners their</b></p> <p>15      <b>hearing that somebody specifically referred,</b></p> <p>16      <b>specifically to margin or guarantee fund deposit</b></p> <p>17      <b>in any of those discussions?</b></p> <p>18      A. I think that the answer to your</p> <p>19      question is that in the documents, that is</p> <p>20      covered. And I'm confident that there may have</p> <p>21      been -- I shouldn't say that.</p> <p>22      I don't recall the specific</p> <p>23      conversations that we had with the clearing</p> <p>24      organizations and other lawyers who may have</p> <p>25      been involved. We may have or may not have</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2   specifically referred to the word "margin" on</p> <p>3   those calls.</p> <p>4       But we did repeatedly exchange</p> <p>5   communications regarding the various forms of</p> <p>6   assets that would be coming over, for example,</p> <p>7   under the TAA.</p> <p>8       <b>Q. We have been talking now about the</b></p> <p>9       <b>time period over the weekend prior to the</b></p> <p>10      <b>closing. I would like to just ask you if I have</b></p> <p>11      <b>missed anything, if we go back to the work that</b></p> <p>12      <b>you were doing from the 15th on, anytime up to</b></p> <p>13      <b>that weekend. During that period, do you recall</b></p> <p>14      <b>any discussions specifically in which margin or</b></p> <p>15      <b>guarantee fund deposit were mentioned?</b></p> <p>16      A. Again, I would say in the deal</p> <p>17      documentation relating to the transfer of assets</p> <p>18      associated with those businesses that were being</p> <p>19      transferred and the agreements as to the</p> <p>20      inclusion of deposits, including customer</p> <p>21      deposits, yes, they were the subject of</p> <p>22      communications in that form.</p> <p>23      <b>Q. And what discussion do you remember in</b></p> <p>24      <b>which anyone specifically referred to margin?</b></p> <p>25      A. As I say, I don't recall specifically</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2   the content of specific conversations that I may</p> <p>3   have had at that time.</p> <p>4       <b>Q. Is there any conversation that you're</b></p> <p>5       <b>aware of where anyone on the Barclays or Cleary</b></p> <p>6       <b>side had specifically discussed guarantee funds</b></p> <p>7       <b>deposit?</b></p> <p>8       MR. MORAG: You can answer to the</p> <p>9       extent it involves someone on the Lehman or</p> <p>10      OCC or DTC side as well.</p> <p>11      A. It was never raised as an issue for</p> <p>12      discussion, because it was assumed by all</p> <p>13      parties, I think, that it was part of the</p> <p>14      business. And certainly nobody on the Lehman</p> <p>15      side ever suggested or raised the question as to</p> <p>16      its needing to be singled out from the language</p> <p>17      that otherwise covered it.</p> <p>18      <b>Q. Now, when you saw that the draft</b></p> <p>19      <b>language referring to margin and guarantee fund</b></p> <p>20      <b>deposit had been removed from the draft, did</b></p> <p>21      <b>that suggest to you that there needed to be a</b></p> <p>22      <b>discussion about this or that someone on the</b></p> <p>23      <b>Lehman side was suggesting that they had</b></p> <p>24      <b>different assumptions or different</b></p> <p>25      <b>understandings from what you had?</b></p> <p>          TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2       MR. MORAG: Objection to form.</p> <p>3       Compound.</p> <p>4       A. As I mentioned, the language that came</p> <p>5   out was actually not specific to OTC -- to</p> <p>6   listed derivatives or listed derivatives</p> <p>7   customers. It was language that sort of</p> <p>8   addressed a variety of issues.</p> <p>9       And so I would not have drawn any</p> <p>10      necessary inference as to what specifically the</p> <p>11      concerns were that, from the Lehman side, were</p> <p>12      being addressed. There were changes to the deal</p> <p>13      that needed to be addressed in that language.</p> <p>14      There were changes in the agreements that</p> <p>15      related to the handling of -- I'm sorry. There</p> <p>16      were changes in the language that was</p> <p>17      documenting, for lack of a better reference, the</p> <p>18      15c3-3 treatment, and indeed the fact that the</p> <p>19      DTC arrangement had essentially changed.</p> <p>20      So it was clear that the language that</p> <p>21      was modified needed to be modified. As to</p> <p>22      whether or not that modification signaled a</p> <p>23      specific view about the treatment of credit</p> <p>24      support for exchange-traded derivatives, you</p> <p>25      would never know until you clarified it with</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>

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<p>1 ROSEN</p> <p>2 your own language, and to my knowledge, nobody</p> <p>3 on the Lehman side, when presented with that</p> <p>4 language, expressed any surprise or objection.</p> <p>5 So I think the clear inference is that</p> <p>6 it was not a surprise to them, and therefore, we</p> <p>7 inferred that there was no intent to communicate</p> <p>8 to us that they didn't think it was part of the</p> <p>9 deal, or anybody else who had the opportunity to</p> <p>10 see those changes, which would have been all the</p> <p>11 signatories.</p> <p>12 <b>Q. So you didn't feel there was any need</b></p> <p>13 <b>to go up and have a specific discussion with the</b></p> <p>14 <b>folks on the Lehman side about the removal of</b></p> <p>15 <b>the language?</b></p> <p>16 A. I didn't think that there was anything</p> <p>17 more that needed to be done than to provide to</p> <p>18 them the language that we thought was</p> <p>19 appropriate in order to clarify what the deal's</p> <p>20 agreement was with respect to the treatment of</p> <p>21 that credit support, that property. That is the</p> <p>22 way we ordinarily communicate in a transaction</p> <p>23 of this type.</p> <p>24 <b>Q. In the beginning of the, of your</b></p> <p>25 <b>paragraph 5, you note that the draft language at</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>issue was an attempt to accurately document the</b></p> <p>3 <b>business deal. Do you see that?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. What is the business deal that you are</b></p> <p>6 <b>referring to there?</b></p> <p>7 A. Here, that Barclays was acquiring the</p> <p>8 exchange-traded businesses, exchange-traded</p> <p>9 derivatives businesses of Lehman and the assets</p> <p>10 and customer deposits and other deposits that</p> <p>11 were part of that business.</p> <p>12 <b>Q. Are you aware of whether there was any</b></p> <p>13 <b>business discussion between the Barclays and</b></p> <p>14 <b>Lehman folks concerning specifically the</b></p> <p>15 <b>acquisition of either margin or clearing fund,</b></p> <p>16 <b>guarantee fund deposit?</b></p> <p>17 MR. HUME: Objection, asked and</p> <p>18 answered.</p> <p>19 MR. MORAG: Objection, form.</p> <p>20 A. I don't know whether there were or</p> <p>21 weren't. I assume as part of the negotiation of</p> <p>22 the deal leading up to the description, the</p> <p>23 documentation of it, that it was implicit in</p> <p>24 those discussions.</p> <p>25 <b>Q. You go on to say that the draft</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>language accomplished this, the beginning of the</b></p> <p>3 <b>next sentence. Do you see that, sir?</b></p> <p>4 A. Um-hm.</p> <p>5 <b>Q. Can you tell me, what did the draft</b></p> <p>6 <b>language accomplish?</b></p> <p>7 A. What did the -- in relation to the</p> <p>8 exchange-traded derivatives, that it -- what</p> <p>9 it -- what this -- I am sorry, let me see.</p> <p>10 It included language that, as I said,</p> <p>11 covered a wide variety of things, but also would</p> <p>12 have provided -- I am sorry, included language</p> <p>13 that clarified that the property of any kind</p> <p>14 that was basically held by any of these or in</p> <p>15 any of these forms, was not an excluded asset</p> <p>16 under the terms of the deal documentation.</p> <p>17 <b>Q. And in the quotes, you have "any and</b></p> <p>18 <b>all property," and then you have square</b></p> <p>19 <b>parenthesis, "including cash." Do you see that?</b></p> <p>20 A. Um-hm.</p> <p>21 <b>Q. Why did you include those square</b></p> <p>22 <b>brackets around the words "including cash"?</b></p> <p>23 A. Just as a clarification. It's not</p> <p>24 necessary, but just for the sake of -- for the</p> <p>25 avoidance of any lack of clarity.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>Q. Why did you not include those words in</b></p> <p>3 <b>the handwritten parenthetical that you provided?</b></p> <p>4 A. The answer to that question -- I'm</p> <p>5 going to try to answer this without going into</p> <p>6 attorney/client privileges, but the answer to</p> <p>7 that question is because we also came to believe</p> <p>8 that this was not the best location for</p> <p>9 clarifying this, because this got caught up in</p> <p>10 provisions dealing with, you know, what the</p> <p>11 parties understood to be an exception to the</p> <p>12 excluded assets, and excluded assets included</p> <p>13 cash. So we wanted to make sure in this</p> <p>14 provision that it was relevant.</p> <p>15 But on the other hand, we realized</p> <p>16 that providing this clarification in an</p> <p>17 exclusion to the -- to an exclusion was not the</p> <p>18 clearest way to do it and, therefore, we decided</p> <p>19 in response, rather than go back into this</p> <p>20 provision and start wordsmithing, which we</p> <p>21 didn't have the time to do, we would just make</p> <p>22 it abundantly clear, in as concise words as we</p> <p>23 could, what the purchased assets included in</p> <p>24 relation to that business.</p> <p>25 <b>Q. And you made it abundantly clear by</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2   <b>putting the parenthetical that made clear it</b></p> <p>3   <b>included property held to secure?</b></p> <p>4       A. Yes.</p> <p>5       <b>Q. And my question is, why did you not</b></p> <p>6   <b>include, beside "property," the words "including</b></p> <p>7   <b>cash"?</b></p> <p>8       A. Didn't think it was necessary. At</p> <p>9   this point in time, it was 5 or 6 o'clock in the</p> <p>10 this morning. We were extremely concerned about</p> <p>11 whether we were going to run out of time in</p> <p>12 terms of the objective of having this deal</p> <p>13 signed in time to be announced early in the</p> <p>14 morning, so as to avoid any negative sort of</p> <p>15 market reaction to the deal not being announced.</p> <p>16       And we were trying in as concise a</p> <p>17 form as possible and as clear a form as possible</p> <p>18 to get it down and not to get embroiled in</p> <p>19 parsing words.</p> <p>20       So I, I mean did I have -- would I</p> <p>21 have preferred to have had hours to have sat</p> <p>22 down and drafted it and perfected it? I</p> <p>23 certainly would. But I thought it was</p> <p>24 absolutely clear that if we said "any property,"</p> <p>25 that it would include cash, noncash, securities,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2   nonsecurities, whether or not it was held by</p> <p>3   Lehman, by a clearing organization, wherever it</p> <p>4   was, and whoever was holding it and whatever its</p> <p>5   character might be.</p> <p>6       I think for the purpose of clarifying</p> <p>7   what might have been a subject of dispute in</p> <p>8   light of the deletion of that language, we</p> <p>9   didn't think it was actually necessary to</p> <p>10 include the language, but we were concerned</p> <p>11 about the sort of negative inferences that could</p> <p>12 arise, and so we thought because it was an</p> <p>13 important point for the deal that we would make</p> <p>14 it as clear as we could, as concisely as we</p> <p>15 could.</p> <p>16       <b>Q. You had had a discussion, and we will</b></p> <p>17   <b>get to this a little bit later, on the subject</b></p> <p>18   <b>of whether cash in the 15c3 account could be</b></p> <p>19   <b>transferred to Barclays. You recall that?</b></p> <p>20       A. Yes.</p> <p>21       <b>Q. And in connection with that, some of</b></p> <p>22   <b>the Lehman people at least took the position</b></p> <p>23   <b>that cash could not be properly transferred?</b></p> <p>24       A. I wouldn't describe what they said as</p> <p>25   that. I would say, this was part of the purpose</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2   of the clarification letter. There were</p> <p>3   provisions about deposits, customer deposits.</p> <p>4   There were provisions in the excluded assets</p> <p>5   provisions of the APA regarding bank accounts.</p> <p>6   And I think it was clear to us that the 15c3-3</p> <p>7   assets were assets of the business that we were</p> <p>8   buying.</p> <p>9       I would describe what I heard at least</p> <p>10 as being an expression of concern as to whether</p> <p>11 in light of what had been said to the court</p> <p>12 about bank deposits, whether or not if we were</p> <p>13 going to include cash in bank deposits -- that</p> <p>14 would be in bank deposits, whether some</p> <p>15 additional steps might need to be taken, which</p> <p>16 would have been inconsistent with completing the</p> <p>17 deal and being able to announce it.</p> <p>18       But I don't recall anybody saying that</p> <p>19 it couldn't be done or that it wasn't part of</p> <p>20 the deal or that it wouldn't be permitted or</p> <p>21 that it wasn't part of the sale order. There</p> <p>22 was, I would have said, a decision taken to</p> <p>23 avoid the issue by limiting the account assets.</p> <p>24       MR. HUME: We have been going for</p> <p>25   about an hour. Can we have a break?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2       MR. MAGUIRE: Sure. If we can just</p> <p>3   wrap up this. It might take a couple of</p> <p>4   minutes.</p> <p>5       <b>Q. Were you at the sale hearing?</b></p> <p>6       A. Only during the, for lack of a better</p> <p>7   word, the intermission. It went into recess and</p> <p>8   I was there. I was not actually there at the</p> <p>9   time that it was --</p> <p>10       <b>Q. Do you know whether the court was told</b></p> <p>11   <b>anything about bank deposits as opposed to cash?</b></p> <p>12       A. No, I don't know. I just know that</p> <p>13   the issue about it was raised, and under the</p> <p>14   circumstances, people were willing to eliminate</p> <p>15   the issue, rather than -- because I think the</p> <p>16   feeling was that if we didn't close before the</p> <p>17   Monday open, there may have been greater</p> <p>18   jeopardy to the deal.</p> <p>19       <b>Q. In order to avoid the issue, Barclays</b></p> <p>20   <b>agreed that it would not take any of the cash in</b></p> <p>21   <b>the Wells Fargo account that was part of the</b></p> <p>22   <b>15c3 account?</b></p> <p>23       MR. MORAG: Objection to the form.</p> <p>24       A. I would say Barclays agreed to include</p> <p>25   language in the clarification letter that only</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 called out the transfer of a certain amount of</p> <p>3 securities associated with the 15c3 account, or</p> <p>4 if those weren't available, other securities of</p> <p>5 similar value.</p> <p>6 <b>Q. And did not call out the 1 billion</b></p> <p>7 <b>dollars in cash that was at Wells Fargo?</b></p> <p>8 A. Not in the clarification provision,</p> <p>9 correct.</p> <p>10 <b>Q. Now, given those discussions, and the</b></p> <p>11 <b>decision by everyone to avoid the cash issue,</b></p> <p>12 <b>did it occur to you that the words "including</b></p> <p>13 <b>cash" should be included in the parenthetical</b></p> <p>14 <b>when you described property held to secure?</b></p> <p>15 A. No. No, because I thought there was a</p> <p>16 clear distinction between deposits and customer</p> <p>17 deposits and LBI cash in its bank accounts.</p> <p>18 MR. MAGUIRE: This is a good time for</p> <p>19 a break.</p> <p>20 (Recess)</p> <p>21 MR. MORAG: I should just put on the</p> <p>22 record, to the extent, Mr. Maguire, you're</p> <p>23 curious, Cleary did search for all</p> <p>24 documents, including any handwritten notes,</p> <p>25 and our production does not include them</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 because we were not able to find the markup</p> <p>3 that you asked about in your examination.</p> <p>4 MR. MAGUIRE: I appreciate that.</p> <p>5 MR. HUME: I should also state we have</p> <p>6 looked for it in the Weil production, have</p> <p>7 not found it. I'm double checking.</p> <p>8 THE WITNESS: Which would have been</p> <p>9 consistent with our handing it to Weil to</p> <p>10 deal with the document.</p> <p>11 BY MR. MAGUIRE:</p> <p>12 <b>Q. Sir, before the break, we were in</b></p> <p>13 <b>paragraph 5 of your declaration and we were</b></p> <p>14 <b>talking about the -- what you referred to as the</b></p> <p>15 <b>business deal in the first and second lines of</b></p> <p>16 <b>that declaration.</b></p> <p>17 <b>Was it your understanding that the</b></p> <p>18 <b>business deal was documented in the asset</b></p> <p>19 <b>purchase agreement?</b></p> <p>20 A. It was my understanding that the deal</p> <p>21 was documented in the asset purchase agreement,</p> <p>22 the first amendment in the clarification letter.</p> <p>23 <b>Q. The language that we have been talking</b></p> <p>24 <b>about in the quotes at the bottom of page 2 of</b></p> <p>25 <b>your declaration, starting with "any and all</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>property," did you draft that language?</b></p> <p>3 A. I'm sorry, could you --</p> <p>4 MR. MORAG: Starting here.</p> <p>5 <b>Q. Paragraph 5 on page 2 and starting</b></p> <p>6 <b>with the language we have been talking about</b></p> <p>7 <b>that starts with the quotation "any and all</b></p> <p>8 <b>property."</b></p> <p>9 A. I was involved in its drafting, but I</p> <p>10 think it was, like many things, a bit of a group</p> <p>11 process.</p> <p>12 <b>Q. So who were the members of this group?</b></p> <p>13 A. The members of the group on the Cleary</p> <p>14 side would have been me, Dana Fleischman, Bob</p> <p>15 Davis, Duane McLaughlin, possibly David</p> <p>16 Leinwand. Whether -- the extent to which any of</p> <p>17 one of them was specifically involved in</p> <p>18 particular language, I don't recall.</p> <p>19 <b>Q. So this was a collective, this</b></p> <p>20 <b>language was a collective drafting effort of a</b></p> <p>21 <b>number of Cleary lawyers?</b></p> <p>22 A. Yes, although I would say probably</p> <p>23 principally me.</p> <p>24 <b>Q. When it was proposed to the Lehman</b></p> <p>25 <b>side, your understanding was that this language</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>accurately reflected the business deal?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Did you ever ask anyone to identify</b></p> <p>5 <b>who had negotiated this specific part of the</b></p> <p>6 <b>business deal?</b></p> <p>7 MR. MORAG: Object to the form.</p> <p>8 I will let you answer if it is -- as</p> <p>9 to the yes or no, but if it involves a</p> <p>10 privileged communication, do not go into the</p> <p>11 substance of the communication.</p> <p>12 A. I assume it was negotiated by the</p> <p>13 principals who negotiated the deal that was</p> <p>14 ultimately documented in the APA and these</p> <p>15 documents. I was not privy to those specific</p> <p>16 negotiations.</p> <p>17 <b>Q. Do you know the names of the</b></p> <p>18 <b>individuals who negotiated the deal specifically</b></p> <p>19 <b>on this point?</b></p> <p>20 A. I don't know who participated in each</p> <p>21 discussion. I know that Archibald Cox and</p> <p>22 Michael Klein and Jonathan Hughes and Rich Ricci</p> <p>23 were involved in the negotiations, but I did</p> <p>24 not -- I don't have personal knowledge of those</p> <p>25 exchanges.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>



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**Q. Do you know who was involved on the Lehman side specifically with respect to the business deal that's -- that you describe in --**

A. Whoever was in those conversations, and I wasn't present, so I couldn't identify them.

**Q. Did the business deal ever change? I'm talking now specifically about that part of the business deal that's the subject of the language you and your group drafted and that you put forth in paragraph 5 of your declaration. Did that part of the business deal change anytime after the discussion of the asset purchase agreement?**

MR. MORAG: Object to the form.  
You can answer.

A. I would say that the only respect in which it changed was reflected in the 3-3 provisions in which Barclays agreed in essence to relinquish the claims specifically in the clarification letter to the -- the non-769 million or whatever it was of securities in the 15c3-3 account.

There were aspects in which the deal  
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**maintained by or on behalf of." Can you tell me what is the distinction here between an account maintained by as opposed to an account maintained on behalf of LBI?**

A. Well, Lehman, when Lehman conducts -- when a broker dealer conducts business with a customer or on behalf of an affiliate or for its own proprietary account, it will reflect, it will be required to reflect on its own books and records accounts which are its accounts. Those assets may be held by custodian banks, other banks, clearing agencies, clearing organizations.

So this is meant to not be limited to those specific alternatives to the account as it is described on the books of the carrying broker, to carry anything, wherever it may be, if it was to secure obligations in essence for which BCI was going to become responsible.

**Q. And you go on to say, "for which Barclays shall become responsible as of the closing." What were you referring to there?**

A. At this point, I believe it was unclear how the DTCC accounts were going to be  
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was evolving as it contemplated it would at the sale hearing in relation to the DTC arrangements. That is all that comes to mind.

**Q. And specifically with respect to assets that were related to derivatives, margin or clearing funds deposit, did the deal change anytime after -- the business deal change at any time after the execution of the asset purchase agreement?**

A. I'm not aware that it ever changed. only that it was clarified.

**Q. You refer, at the bottom of page 2 and top of page 3 of your declaration, to the obligations of LBI or any other person. To whom are you referring with the words "any other person"?**

A. It could be -- well, without limitation on what it might include, the two obvious inclusions would have been the obligations of LBI or any affiliate or any customer who was involved as part of these transactions or part of the business that was being transferred.

**Q. Then you say, "in an account**  
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handled, but it was clear that, for example, to the extent that Barclays was a clearing, either a clearing member of a clearing organization which carried accounts, or was a clearing broker carrying positions with other clearing brokers who were clearing members of other exchanges on which positions may have been carried in or out of the United States, whatever the form, that would have been covered.

The point was that if there was credit support available and Barclays was on the hook and potentially subject to liabilities associated with that, that all of those assets would be available.

**Q. And were Barclays -- in the case of a foreign account, where Barclays was not taking -- stepping into the shoes of Lehman and taking over from Lehman, the obligations to a foreign exchange or clearing corporation, it would get the exchange-traded derivatives but not the associated assets?**

MR. MORAG: Object to form.

A. Not at all. Not at all. That's not what I am saying at all.

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<p>1 ROSEN</p> <p>2 In fact, if BCI was going to be in the</p> <p>3 chain of financial responsibility for those</p> <p>4 positions, whether it was because they were</p> <p>5 taking the account or they were carrying the</p> <p>6 account or they were carrying the account with a</p> <p>7 foreign clearinghouse or another broker who was</p> <p>8 in the clearinghouse, that that would be</p> <p>9 included.</p> <p>10 <b>Q. And that's what I am trying to</b></p> <p>11 <b>understand. Where the flip side of that</b></p> <p>12 <b>happens, where Barclays was not taking the</b></p> <p>13 <b>account, did you consider what happens when</b></p> <p>14 <b>Barclays does not take the account at a foreign</b></p> <p>15 <b>exchange?</b></p> <p>16 A. I think that language is dealt with</p> <p>17 elsewhere. And I need the clarification letter</p> <p>18 to --</p> <p>19 <b>Q. So you believe there is a separate</b></p> <p>20 <b>provision that deals with when Barclays takes</b></p> <p>21 <b>exchange-traded derivatives --</b></p> <p>22 A. I don't recall the specific language.</p> <p>23 I would prefer to --</p> <p>24 MR. MORAG: You have to --</p> <p>25 A. I am sorry, I prefer to look at the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 clarification letter.</p> <p>3 <b>Q. Well, we will certainly get to the</b></p> <p>4 <b>clarification letter, but your understanding is</b></p> <p>5 <b>that that's not covered by this language; is</b></p> <p>6 <b>that correct?</b></p> <p>7 A. Well, there are ellipses in here.</p> <p>8 This is a very long provision, and I'm not</p> <p>9 prepared to summarize all the things that it</p> <p>10 does or does not cover in this abbreviated form.</p> <p>11 So if you want me to tell you what it covers,</p> <p>12 you are going to have to give me the provisions</p> <p>13 so that I can look at them.</p> <p>14 <b>Q. Sounds fair. I think it is Exhibit</b></p> <p>15 <b>25.</b></p> <p>16 MR. MORAG: Mr. Maguire, if I recall</p> <p>17 correctly, Exhibit 25 is the executed</p> <p>18 clarification letter. You have been asking</p> <p>19 him questions about language which was not</p> <p>20 included in the executed clarification</p> <p>21 letter. So I'm not sure that's going to be</p> <p>22 responsive to his request.</p> <p>23 <b>Q. That may be fair. Maybe we should go</b></p> <p>24 <b>through the drafts.</b></p> <p>25 A. I think we should look at the draft</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 that has this --</p> <p>3 MR. MORAG: Only if you have questions</p> <p>4 about the draft. If you have questions</p> <p>5 about the final, show him the final.</p> <p>6 <b>Q. Why don't we do that. We will go</b></p> <p>7 <b>through the drafts and then we will take a look</b></p> <p>8 <b>at the final.</b></p> <p>9 <b>Before we do that, let me ask you to</b></p> <p>10 <b>scroll down to the end of that paragraph, the</b></p> <p>11 <b>bottom of paragraph 5. You refer there to,</b></p> <p>12 <b>"which is consistent with the discussions of the</b></p> <p>13 <b>lawyers from both sides."</b></p> <p>14 <b>Do you see that reference to those</b></p> <p>15 <b>discussions?</b></p> <p>16 A. Um-hm.</p> <p>17 <b>Q. Can you tell me what discussions you</b></p> <p>18 <b>are referring to there?</b></p> <p>19 A. The discussions negotiating the terms</p> <p>20 of the deal, which were that Lehman sold the</p> <p>21 exchange-traded derivatives business and all</p> <p>22 assets associated with it and all deposits and</p> <p>23 customer deposits. But basically it is</p> <p>24 consistent with the treatment in the</p> <p>25 documentation and therefore the negotiation of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 the documentation relating to what it was that</p> <p>3 Barclays was getting.</p> <p>4 <b>Q. Is there any specific conversation</b></p> <p>5 <b>among any two or more lawyers that you were</b></p> <p>6 <b>intending to refer to in that last sentence of</b></p> <p>7 <b>paragraph 5?</b></p> <p>8 A. I was not present in the negotiations</p> <p>9 of the original provisions in the APA that this</p> <p>10 clarifies.</p> <p>11 <b>Q. And you're not aware of any</b></p> <p>12 <b>conversations that your partners have told you</b></p> <p>13 <b>they remember from the negotiation of the</b></p> <p>14 <b>original deal?</b></p> <p>15 <b>What I am trying to clarify is just,</b></p> <p>16 <b>did you have in mind when you wrote this</b></p> <p>17 <b>reference to discussions something either that</b></p> <p>18 <b>you remembered or something that one of your</b></p> <p>19 <b>partners told you about?</b></p> <p>20 A. No. I'm referring to what would have</p> <p>21 had to have been discussed if the parties were</p> <p>22 to come to the terms on which they signed the</p> <p>23 APA.</p> <p>24 <b>Q. I am going to show you a document that</b></p> <p>25 <b>has previously been marked as Exhibit 30. Do</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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**you recognize this document?**

A. Looking at the first page, no. I don't believe I was copied -- yes, I am. OK.

I don't recall looking at this document, but it is possible that I saw it at some point.

**Q. If you look, sir, at paragraph 11, you will see that the language there includes a paragraph on derivatives. Do you see that?**

A. Yes.

**Q. And there is a reference to Exhibit A. Did you ever see an Exhibit A?**

A. I don't recall whether I saw Exhibit A.

MR. MAGUIRE: I would ask your counsel to maybe let us know if you were able to find an Exhibit A in the Cleary production.

MR. MORAG: If we did, we would have produced it. I certainly have never seen it. It would not be the first time in this deal that someone anticipated an Exhibit A that was never completed.

**Q. Mr. Rosen, I will show you a document previously marked as Exhibit 36. Have you ever**

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**seen this draft, sir?**

A. I can't be sure. I would have to look at it against other drafts to know.

**Q. If you look at the markup version.**

A. Is that in here?

MR. MORAG: At the end.

**Q. About halfway through.**

A. OK.

**Q. On the first page of the markup, if you look down at the bottom, you will see there is a provision that refers to a clearance box. Do you see that?**

A. Let me just look at it.

**Q. Sure.**

A. Yes, I see the provision, clause B.

**Q. Did you understand that Barclays was acquiring assets at the DTC clearance box?**

MR. MORAG: Object to the form.

A. I understood that they were acquiring all the assets of the business, including clearance box assets, some of which were at DTC and some of which were not at DTC. That was my understanding at the time. All of the assets of the business that was being acquired other than TSG Reporting - Worldwide 877-702-9580

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the defined excluded assets.

**Q. If you turn to page 4, you will see a section 8. It refers to DTC arrangements.**

MR. MORAG: There is two section 8s.

I guess you mean the second one.

**Q. The second one. Yes.**

A. Um-hm, I do see it.

**Q. Did you have an understanding at any time that Barclays was contemplating assuming all of Lehman's obligations to the Depository Trust and Clearing Corporation?**

A. I'm not exactly sure what you mean by contemplating, but the question as to how the DTCC situation would be handled and documented was the subject of negotiations. There were a range of potential outcomes, one of which could have included assuming those rights and obligations, but there were concerns associated with the liabilities to which they had not contemplated they would be subject based on the liabilities that were intended to be excluded but which they would become responsible for if they just simply assumed the liabilities in the accounts.

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So at this point in time, I don't think there was -- it was -- I don't think people were proceeding on the Barclays side necessarily on the assumption they were going to be doing this, but this was an open issue.

**Q. I am going to show you a document that has previously been marked as Exhibit 49.**

A. Is this blacklined --

**Q. Why don't we follow the blacklined. Do you recall seeing this document before?**

A. It looks like a draft I may have seen. Again, without, you know, comparing them, I can't be sure.

**Q. Was that a protocol that Cleary followed at the top of the blackline, where it says "CGSH comments" and the date and time?**

MR. HUME: Object to the form.

MR. MORAG: Same objection.

A. I don't know that it is a practice that's uniformly followed, but when there is enough time and the comments are transmitted in this way, you might do it just because there could otherwise be confusion about the timing of TSG Reporting - Worldwide 877-702-9580

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<p>1 ROSEN</p> <p>2 drafts and what followed what.</p> <p>3 But it would not have been the</p> <p>4 protocol, for example, in circumstances where,</p> <p>5 as happened frequently in this deal, comments</p> <p>6 were just scribbled on a piece of paper and sort</p> <p>7 of shared and then ultimately inputted.</p> <p>8 <b>Q. Do you see at the bottom of the first</b></p> <p>9 <b>page, there is a reference to certain assets and</b></p> <p>10 <b>the clearance box language has been removed? Do</b></p> <p>11 <b>you see that?</b></p> <p>12 MR. HUME: Object to the</p> <p>13 characterization of the document.</p> <p>14 MR. MORAG: There is no question</p> <p>15 pending other than to refer your attention</p> <p>16 to the first page.</p> <p>17 A. I'm just trying to understand the</p> <p>18 entire document. OK. Yes.</p> <p>19 <b>Q. At the bottom where the clearance box</b></p> <p>20 <b>language was on the bottom of page 1, do you see</b></p> <p>21 <b>that?</b></p> <p>22 A. Yes, I do.</p> <p>23 <b>Q. You will see that Cleary has added the</b></p> <p>24 <b>language, "or any portion of such securities."</b></p> <p>25 <b>See that, the last two lines on the page?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. Um-hm, yes, I do.</p> <p>3 <b>Q. Just from your previous testimony, I</b></p> <p>4 <b>understood your understanding was that Barclays</b></p> <p>5 <b>was acquiring all of the assets at DTC. So can</b></p> <p>6 <b>you explain to me why Barclays wanted to</b></p> <p>7 <b>negotiate the right to acquire only a portion</b></p> <p>8 <b>instead of all of the assets?</b></p> <p>9 MR. MORAG: Object to the form, and</p> <p>10 objection, mischaracterizes his testimony.</p> <p>11 A. I didn't say that they were buying all</p> <p>12 the assets at DTCC. I said they were acquiring</p> <p>13 the assets of the business.</p> <p>14 And in terms of this, it looks to me</p> <p>15 as though the portion of this, the change that</p> <p>16 was made here, was that to the extent there was</p> <p>17 any discretion not to take them, that discretion</p> <p>18 enabled them to decide when they were going to</p> <p>19 take all or just a portion of them. It wasn't</p> <p>20 an all or nothing decision.</p> <p>21 I think there was not -- it was not</p> <p>22 entirely clear -- I'll just leave it at that.</p> <p>23 <b>Q. And can you tell me why it was</b></p> <p>24 <b>important to have the ability to take a portion</b></p> <p>25 <b>of the assets, instead of all of the assets?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 MR. HUME: I am going to object to the</p> <p>3 lack of foundation and to the extent it</p> <p>4 calls for speculation.</p> <p>5 MR. MORAG: Same objection.</p> <p>6 A. I wasn't directly involved in this,</p> <p>7 but my recollection is that this provision</p> <p>8 relating to the ability not to take some</p> <p>9 clearance box assets, I'm not sure that we were</p> <p>10 the source of that, but I think this provision</p> <p>11 merely provided more flexibility that to the</p> <p>12 extent that there was discretion to take or not,</p> <p>13 that was a discretion to take or not in whole or</p> <p>14 in part.</p> <p>15 <b>Q. And were you privy to any of the</b></p> <p>16 <b>discussions about why it was important to have</b></p> <p>17 <b>that flexibility?</b></p> <p>18 A. I was not privy to those discussions,</p> <p>19 and I don't know whether there were discussions</p> <p>20 or whether it was a provision that was suggested</p> <p>21 by the other side, or whether we really cared</p> <p>22 about it, given that it provided a flexibility</p> <p>23 that we didn't have any obligation to, that</p> <p>24 Barclays didn't have any obligation to exercise</p> <p>25 or not.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>Q. If you turn to the top of the next</b></p> <p>3 <b>page, you will see item C on the second line</b></p> <p>4 <b>refers to exchange-traded futures. Do you know</b></p> <p>5 <b>why the reference here is to exchange-traded</b></p> <p>6 <b>futures?</b></p> <p>7 A. This was, I think -- this was a</p> <p>8 placeholder. I think the purpose of putting</p> <p>9 this in brackets was that people wanted to put a</p> <p>10 marker down that they needed to consider whether</p> <p>11 anything needed to be addressed to those issues,</p> <p>12 and if so, what, and people didn't know exactly</p> <p>13 what it would have been appropriate to have</p> <p>14 included here or whether it was necessary to</p> <p>15 include anything, but so as not to drop the</p> <p>16 issue, I think the bracketed language was</p> <p>17 included, and I don't think there was any</p> <p>18 particular attention paid to exactly how those</p> <p>19 issues were put on the table.</p> <p>20 <b>Q. And then if you look down at item D,</b></p> <p>21 <b>you will see the exception, exclusion from the</b></p> <p>22 <b>exclusion.</b></p> <p>23 A. Right. I see that.</p> <p>24 <b>Q. And this includes the language that</b></p> <p>25 <b>you referred to in your declaration?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2           A. It seems to. Again, I can't be sure</p> <p>3           that all of these words are exactly the same</p> <p>4           without verifying, but it looks like the</p> <p>5           provision that was just described.</p> <p>6           <b>Q. If you turn to the next page, page 4,</b></p> <p>7           <b>and the section 8, do you see the same language</b></p> <p>8           <b>appearing in that section?</b></p> <p>9           MR. MORAG: As what?</p> <p>10          MR. MAGUIRE: As well.</p> <p>11          MR. MORAG: No. As what? Same as</p> <p>12          what?</p> <p>13          <b>Q. Same as the language that you quote in</b></p> <p>14          <b>paragraph 5 of your declaration.</b></p> <p>15          A. I see some similar wording. I don't</p> <p>16          think it is exactly the same.</p> <p>17          <b>Q. If we turn back to page 2, to that</b></p> <p>18          <b>section D, as in David.</b></p> <p>19          MR. HUME: Section 2? Page 2.</p> <p>20          <b>Q. At the beginning of D, it specifically</b></p> <p>21          <b>says that "excluded assets shall not include any</b></p> <p>22          <b>and all property of any customer." Do you see</b></p> <p>23          <b>that?</b></p> <p>24          A. I see that it says "except as</p> <p>25          otherwise specified in the definition of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           purchased assets, excluded assets shall not..."</p> <p>3           <b>Q. And what was the point of this</b></p> <p>4           <b>reference to customer property?</b></p> <p>5           A. The purpose of this language was to</p> <p>6           insure that to the extent that -- what do you</p> <p>7           call it -- to insure that to the extent that, in</p> <p>8           connection with any account that was</p> <p>9           transferred, there were liabilities associated</p> <p>10          with them at the property that secured those</p> <p>11          obligations and protected those liabilities,</p> <p>12          were included in the deal, not excluded by any</p> <p>13          other provision.</p> <p>14          <b>Q. And you're talking about all the</b></p> <p>15          <b>customer accounts that were transferred from</b></p> <p>16          <b>Lehman to Barclays?</b></p> <p>17          A. Yes, this refers to customers whose</p> <p>18          accounts were being transferred.</p> <p>19          <b>Q. You see a little further down, there</b></p> <p>20          <b>is a reference to 15c3-3?</b></p> <p>21          A. By the way, it says "or."</p> <p>22          <b>Q. Right.</b></p> <p>23          A. "Maintained by or on behalf of," "for</p> <p>24          which they become responsible," parsing down.</p> <p>25          So whether or not the account was</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2           being transferred, if somehow Lehman -- Barclays</p> <p>3           was to assume responsibility for that, that</p> <p>4           would also be included. It didn't have to</p> <p>5           necessarily be a transferred account.</p> <p>6           <b>Q. So you're saying it either had to be a</b></p> <p>7           <b>transferred account or an account for which</b></p> <p>8           <b>Barclays became responsible?</b></p> <p>9           A. You know, I hate to say this, but this</p> <p>10          sentence is incomplete. I see that it says</p> <p>11          maintained, A, and then I don't see a clause B.</p> <p>12          So it is not impossible that there was other</p> <p>13          language that should have been included here</p> <p>14          that wasn't.</p> <p>15          But in terms of the language that's in</p> <p>16          here, I think the concept was, if we were taking</p> <p>17          accounts or would otherwise become responsible</p> <p>18          for them, that they would be ours, and if they</p> <p>19          were otherwise purchased assets, they would be</p> <p>20          ours. Any of those three categories would have</p> <p>21          been encompassed.</p> <p>22          <b>Q. And the 15c3 account is mentioned here</b></p> <p>23          <b>too, right?</b></p> <p>24          A. Yes.</p> <p>25          <b>Q. And you understood that the entire</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           <b>15c3 account was being transferred to Barclays;</b></p> <p>3           <b>is that correct?</b></p> <p>4           MR. MORAG: Objection, time frame.</p> <p>5           <b>Q. The time frame was as of this draft.</b></p> <p>6           A. That is what this draft seems to</p> <p>7           provide.</p> <p>8           <b>Q. Now, we discussed earlier about how</b></p> <p>9           <b>Barclays was getting the assets associated with</b></p> <p>10          <b>the accounts when it was becoming responsible</b></p> <p>11          <b>for the accounts, and I had asked you about</b></p> <p>12          <b>foreign exchanges where Barclays was not taking</b></p> <p>13          <b>over the accounts, it was not stepping into the</b></p> <p>14          <b>shoes of Lehman, and the question I asked you</b></p> <p>15          <b>then, and I would like to re-pose to you now --</b></p> <p>16          A. I would like to just stop you and say,</p> <p>17          I'm not aware of Lehman not -- of there being a</p> <p>18          distinction in the context of the</p> <p>19          exchange-traded derivatives between, you know,</p> <p>20          U.S. listed derivatives and non-U.S. listed</p> <p>21          derivatives. So you can postulate that, but I'm</p> <p>22          not necessarily agreeing that that's the right</p> <p>23          characterization.</p> <p>24          <b>Q. I'm not characterizing derivatives</b></p> <p>25          <b>differently. I'm talking about where -- I'm</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2     <b>asking you to focus on the distinction between</b></p> <p>3     <b>the accounts that Barclays was assuming and</b></p> <p>4     <b>becoming responsible for and the accounts that</b></p> <p>5     <b>Barclays was not assuming and not becoming</b></p> <p>6     <b>responsible for. And you told me about the</b></p> <p>7     <b>first. Now I want to ask you about the second.</b></p> <p>8           <b>With respect to those accounts, and</b></p> <p>9     <b>the example I will give you is the foreign</b></p> <p>10    <b>accounts, when Barclays was acquiring</b></p> <p>11    <b>exchange-traded derivatives in foreign</b></p> <p>12    <b>organizations around the world and was not</b></p> <p>13    <b>stepping into the shoes of the foreign -- of</b></p> <p>14    <b>Lehman in those foreign clearing organizations,</b></p> <p>15    <b>what was your understanding as to how margin</b></p> <p>16    <b>clearing fund deposit was being treated under</b></p> <p>17    <b>the business deal?</b></p> <p>18           MR. HUME: I object to the question as</p> <p>19           lacking foundation, particularly in light of</p> <p>20           the witness' testimony that he is not aware</p> <p>21           of any such accounts. Therefore, I object</p> <p>22           that it calls for speculation and a</p> <p>23           hypothetical, and he is not here as an</p> <p>24           expert.</p> <p>25           A. Well, if there was a guarantee fund</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2     deposit, and it was a Lehman guarantee fund</p> <p>3     deposit, you would have to parse that under the</p> <p>4     agreement. But there are -- the fact that</p> <p>5     Lehman may not have been a clearing member of</p> <p>6     the foreign clearinghouse directly and had</p> <p>7     contributed to the guarantee fund deposit does</p> <p>8     not mean that was not an account for which</p> <p>9     Barclays would have become responsible, as I</p> <p>10    said, if Barclays was in any part of the chain</p> <p>11    between customer and the clearinghouse.</p> <p>12           So, it may not have been Barclays -- a</p> <p>13    transfer of an account, but if Lehman maintained</p> <p>14    the account and carried the account with</p> <p>15    Barclays who carried it with somebody else, that</p> <p>16    would have been a different matter. And if it</p> <p>17    was part of the assets that were purchased, if</p> <p>18    it were part of the assets that were purchased,</p> <p>19    then whether or not the account was transferred</p> <p>20    or whether or not it was an account for which</p> <p>21    Barclays became responsible, if it was something</p> <p>22    that they acquired as part of Lehman's business,</p> <p>23    exchange listed derivatives business, then it</p> <p>24    would be included.</p> <p>25           I guess I am not here to advise you as</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2     to whether the language provided for that or</p> <p>3     not.</p> <p>4           <b>Q. I don't want any advice, sir. What I</b></p> <p>5     <b>am looking for is to follow up on your earlier</b></p> <p>6     <b>testimony where you said you needed to see the</b></p> <p>7     <b>draft, and specifically what I had asked you was</b></p> <p>8     <b>to see where Barclays was not taking the</b></p> <p>9     <b>account, Barclays did not take the account at a</b></p> <p>10    <b>foreign exchange. And I believe you answered</b></p> <p>11    <b>that that language is dealt with elsewhere and</b></p> <p>12    <b>you needed the clarification letter to point</b></p> <p>13    <b>that out.</b></p> <p>14           <b>Can you point out in this draft of the</b></p> <p>15    <b>clarification letter anything that you</b></p> <p>16    <b>understood at the time covered the situation</b></p> <p>17    <b>where Barclays was not acquiring the account?</b></p> <p>18           MR. HUME: Objection, lacks</p> <p>19           foundation. I don't think you have</p> <p>20           established when Barclays didn't acquire the</p> <p>21           account or what that means.</p> <p>22           MR. MAGUIRE: I'm just asking the</p> <p>23           witness to identify what he was referring to</p> <p>24           in his prior testimony.</p> <p>25           A. You are asking -- I am sorry, can you</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2     ask specifically the question --</p> <p>3           <b>Q. Sure.</b></p> <p>4           A. -- that you are asking me to respond</p> <p>5     to.</p> <p>6           <b>Q. What I am focusing on is the limiting</b></p> <p>7     <b>words -- I won't give it a characterization,</b></p> <p>8     <b>I'll say the words, that are in the language</b></p> <p>9     <b>drafted here by you and your Cleary colleagues,</b></p> <p>10    <b>where you -- where the language we have been</b></p> <p>11    <b>discussing is specific to accounts for which</b></p> <p>12    <b>purchaser shall become responsible as of the</b></p> <p>13    <b>closing.</b></p> <p>14           <b>I'm asking you what -- where in this</b></p> <p>15    <b>document did it deal with those accounts for</b></p> <p>16    <b>which Barclays did not become responsible at the</b></p> <p>17    <b>closing?</b></p> <p>18           MR. MORAG: Object to the form, and I</p> <p>19           think you have mischaracterized his</p> <p>20           testimony. I'm not sure he said it was</p> <p>21           reflected in this draft.</p> <p>22           A. Well, as I said, this exception is</p> <p>23           itself limited to the extent that it was a</p> <p>24           purchased asset of a business. This language</p> <p>25           does not call out and specifically address --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 this particular provision doesn't specifically</p> <p>3 address it, and how it would be treated would be</p> <p>4 a function of how you evaluate the scope of the</p> <p>5 purchased assets which were all the assets</p> <p>6 associated with the business.</p> <p>7 So you would still have to evaluate</p> <p>8 it, not under this language but under the</p> <p>9 purchased asset provisions. Obviously I can't</p> <p>10 go further into how you would evaluate those</p> <p>11 provisions.</p> <p>12 <b>Q. I'm not asking you to form an opinion</b></p> <p>13 <b>here, just so we are clear. I am only asking</b></p> <p>14 <b>you for your understanding at the time. And --</b></p> <p>15 A. As I said, I'm not -- there seems to</p> <p>16 be a clause B that's not here, and so I'm not</p> <p>17 entirely comfortable sitting here reflecting on</p> <p>18 all of the things that I was thinking about at</p> <p>19 the time that I drafted.</p> <p>20 But I will -- but I agree that the</p> <p>21 language here as it relates to customer</p> <p>22 accounts, are accounts that are transferred or</p> <p>23 accounts for which BCI is becoming responsible</p> <p>24 in some way.</p> <p>25 <b>Q. And you had referred earlier in your</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>testimony to where that situation was covered by</b></p> <p>3 <b>language elsewhere. Was there some other</b></p> <p>4 <b>language --</b></p> <p>5 A. I am sorry, I am sorry. Or if it was</p> <p>6 a cash item maintained by LBI pursuant to</p> <p>7 15c3-3.</p> <p>8 So if there was -- so it wouldn't have</p> <p>9 been customer property, it would have been</p> <p>10 property, technically property of Lehman</p> <p>11 Brothers, Inc. But to the extent that it</p> <p>12 relates, the reserve relates to a customer</p> <p>13 account, that does not seem to be so limited</p> <p>14 here.</p> <p>15 But I don't think you need me to parse</p> <p>16 the language in this provision.</p> <p>17 <b>Q. No. What I am looking for, sir, is,</b></p> <p>18 <b>when you referred to language elsewhere covering</b></p> <p>19 <b>this specific point where Barclays was not</b></p> <p>20 <b>acquiring the accounts, what language did you</b></p> <p>21 <b>have in mind?</b></p> <p>22 A. Purchased assets.</p> <p>23 <b>Q. Section 1 --</b></p> <p>24 A. Purchased assets provisions.</p> <p>25 <b>Q. Section 1 of the clarification letter?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 A. The answer to your question is, all of</p> <p>3 the other provisions of the documentation that</p> <p>4 establish the rights and obligations of the</p> <p>5 parties.</p> <p>6 <b>Q. Is there anything specific you can</b></p> <p>7 <b>point me to?</b></p> <p>8 A. The provisions that relate to</p> <p>9 purchased assets.</p> <p>10 <b>Q. Is that generally section 1 of the</b></p> <p>11 <b>clarification letter, or is there anything --</b></p> <p>12 A. It is in the APA, and it's in the</p> <p>13 clarification letter.</p> <p>14 <b>Q. Is there any more specificity you can</b></p> <p>15 <b>provide me?</b></p> <p>16 A. I think I am going to leave that</p> <p>17 parsing to you.</p> <p>18 <b>Q. If you turn to page 4, section 8, the</b></p> <p>19 <b>new section 8 that starts with DTC arrangements</b></p> <p>20 <b>and some language, that language and other</b></p> <p>21 <b>language removed. Do you see that?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. Can you tell me what prompted the</b></p> <p>24 <b>removal of the language concerning the DTC</b></p> <p>25 <b>arrangements?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. I don't think it was removal of that</p> <p>3 language so much as a belief by the drafters</p> <p>4 that these provisions needed to cover a broader</p> <p>5 set of -- category of arrangements than just</p> <p>6 DTCC. Because, for example, there was the OCC</p> <p>7 arrangement and possibly other clearinghouses of</p> <p>8 which Lehman might have been a member that might</p> <p>9 have been coming over.</p> <p>10 <b>Q. This section continues in the next</b></p> <p>11 <b>sentence, "Assumption of accounts: Purchaser</b></p> <p>12 <b>shall assume all customer accounts of the</b></p> <p>13 <b>business." Do you see that?</b></p> <p>14 A. I do.</p> <p>15 <b>Q. And do you understand that the text</b></p> <p>16 <b>that follows all describes transfers of property</b></p> <p>17 <b>to Barclays in connection with the transfer of</b></p> <p>18 <b>customer accounts?</b></p> <p>19 MR. HUME: Objection to the form.</p> <p>20 A. First let me just clarify that it says</p> <p>21 all accounts of the business, not necessarily</p> <p>22 all accounts.</p> <p>23 MR. MORAG: I am going to object --</p> <p>24 A. I think to answer your question, I am</p> <p>25 going to have to evaluate how you interpret the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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interplay of various provisions here. I'm not sure I can answer that without effectively analyzing the contract and interpreting it.

**Q. Did you understand that Barclays was assuming all of the customer accounts of the business?**

MR. HUME: Objection to the form.

MR. MORAG: Again, the time frame?

**Q. At the time of this draft.**

A. I -- it was very fluid. I can't recall when I understood what precisely was in and what was out. I knew that there were some things that were in and some things that were out, but I'm not sure at this time what my state of knowledge was.

I was also not the draftsman of this or the draftsman to use language that was common to the provision.

**Q. Did you come to understand at some point that certain of the customer accounts of the business were not being assumed by Barclays?**

A. Yes. Yes, I understood that there was the sale of something called PAM that was being sold to Neuberger Berman. I can't remember when

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I became aware of that.

And I believe that there was -- there were certain exceptions to the PIM accounts, or maybe it was some other business, but I didn't -- as I say, I am not -- I was not and am not familiar with how the business was organized, but there were some that were in and there were some that were not.

**Q. I will show you a document previously marked as Exhibit 616A. Obviously I'm not going to ask you about the first page, which is an e-mail that you weren't copied on, but I will ask you, sir, if the rest of the document is a draft that you were aware of at the time.**

A. I'm not sure that I can -- I can't read this. I can't read out the provisions, and I don't know what time this document was generated or when it was shared with anyone on our side sitting here. I don't know. This may have been an internal draft. I'm not sure I recall seeing it contemporaneously.

**Q. The only reason I wanted to show it to you is really on page 2 at the bottom, if you can make out through the highlighting, you will**

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**see language concerning margin and guarantee funds deposit, the language that you address in your declaration.**

A. I cannot actually see it on this copy unfortunately.

**Q. OK. I'll represent to you that this draft removes that language. I think in your declaration, you refer to a draft --**

MR. HUME: Are you representing it is removed or removed and replaced with something else?

MR. MAGUIRE: I can read it on my copy.

MR. HUME: I understand. But you are representing that it is removed. Are you representing that anything was added?

MR. MAGUIRE: I am certainly not representing that.

MR. HUME: There is language added right after the removal.

MR. MORAG: If I may state for the record, in terms of the declaration, the fact of the non-inclusion of the language of paragraph 5 was established by a draft, a

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subsequent draft, but not necessarily this one.

MR. MAGUIRE: You're right, actually, and we will show that to the witness next. It is Exhibit 50.

**Q. In broad terms, you were aware that the language we have been discussing from your -- that you quote in your declaration was removed, but do you have a recollection of actually seeing the draft that had that removal in it, that showed the actual deletion of that language?**

A. I would have seen a draft which modified the language that we had included, as I described earlier. Whether I saw it in a blackline or a clean copy, I can't remember.

**Q. Did you ask any of your partners about that question, whether they saw it with the language actually deleted --**

A. I didn't ask my partners or I don't recall asking my partners that question.

**Q. Let me show you a document previously marked as Exhibit 50. Take whatever time you need to review the draft, sir, and just let me**

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<p style="text-align: right;">Page 90</p> <p>1                   <b>ROSEN</b></p> <p>2   <b>know when you're ready.</b></p> <p>3       <b>And my first question is going to be,</b></p> <p>4   <b>have you seen this draft before?</b></p> <p>5       A. I've seen before an e-mail transmittal</p> <p>6   from Michael Mazzuchi passing on a draft of the</p> <p>7   clarification letter to DTCC and its counsel at</p> <p>8   their request, and there being a draft of the</p> <p>9   clarification letter attached to it that was</p> <p>10 provided to us by Weil.</p> <p>11       But as to whether this is exactly the</p> <p>12 same draft, I can't say. I would have to</p> <p>13 verify.</p> <p>14       <b>Q. You will see at the bottom of page 1</b></p> <p>15 <b>of the draft is a reference to LBI's clearance</b></p> <p>16 <b>boxes.</b></p> <p>17       A. I see that.</p> <p>18       <b>Q. Do you know why the word DTC was not</b></p> <p>19 <b>included there?</b></p> <p>20       A. My understanding is that it was not</p> <p>21 included because there were clearance box assets</p> <p>22 held at locations other than DTCC. So DTCC was</p> <p>23 not the exclusive depository of clearance boxes,</p> <p>24 is my recollection.</p> <p>25       <b>Q. And what were the other depositories?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 91</p> <p>1                   <b>ROSEN</b></p> <p>2       A. I don't remember knowing the details.</p> <p>3       <b>Q. Did anyone consider saying DTC and</b></p> <p>4 <b>other clearance boxes?</b></p> <p>5       MR. MORAG: Object to the form.</p> <p>6       A. I wouldn't speculate as to whether</p> <p>7 somebody did or didn't. They may have.</p> <p>8       <b>Q. In a prior draft, there had been a</b></p> <p>9 <b>reference to the box 074, which I understand was</b></p> <p>10 <b>the DTC box. Do you have any knowledge as to</b></p> <p>11 <b>why that reference was dropped?</b></p> <p>12       A. I am not certain, but I have a</p> <p>13 recollection that it was because 074 may not</p> <p>14 have included all of the clearance box assets,</p> <p>15 that they may not have been confined to the</p> <p>16 account 074. But I'm not 100 percent certain.</p> <p>17 I have a recollection of something along those</p> <p>18 lines.</p> <p>19       <b>Q. If you look at the bottom of page 1,</b></p> <p>20 <b>you will see there is a parenthetical that says,</b></p> <p>21 <b>"provided, however, that purchaser in its</b></p> <p>22 <b>discretion may elect within 60 days after the</b></p> <p>23 <b>closing to return any such securities to LBI."</b></p> <p>24       <b>Do you see that?</b></p> <p>25       A. Yeah.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 92</p> <p>1                   <b>ROSEN</b></p> <p>2       <b>Q. And can you tell me what was the</b></p> <p>3 <b>purpose of that?</b></p> <p>4       A. I'm not sure that we were the source</p> <p>5 of that language. I think that on its face, it</p> <p>6 seemed to have contemplated that there may be</p> <p>7 things that, in the clearance box, that Barclays</p> <p>8 might not have wanted.</p> <p>9       <b>Q. And do you have any understanding as</b></p> <p>10 <b>to what kinds of assets Barclays would not want</b></p> <p>11 <b>from the clearance box?</b></p> <p>12       MR. HUME: Objection, calls for</p> <p>13 speculation.</p> <p>14       A. As I say, I'm not sure that this was</p> <p>15 motivated by Barclays, and I'm not sure that</p> <p>16 this wasn't an option that was being provided to</p> <p>17 Barclays that Barclays didn't see any reason to</p> <p>18 negotiate, since it gave them the ability to do</p> <p>19 something but not an obligation to do it.</p> <p>20       <b>Q. But you don't have knowledge as to</b></p> <p>21 <b>what prompted this?</b></p> <p>22       A. No, I don't. Or I should say I don't</p> <p>23 recall.</p> <p>24       <b>Q. If you turn to page 4, and see the</b></p> <p>25 <b>paragraph 8, transfer of customer accounts. And</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 93</p> <p>1                   <b>ROSEN</b></p> <p>2 <b>towards the end of that, you will see a</b></p> <p>3 <b>reference to 15c3.</b></p> <p>4       A. Yes.</p> <p>5       <b>Q. And at the end of that sentence, it</b></p> <p>6 <b>refers to the phrase, "or securities of</b></p> <p>7 <b>substantially the same nature and value."</b></p> <p>8       A. Yes.</p> <p>9       <b>Q. Can you tell me how did those words</b></p> <p>10 <b>get to be inserted in the clarification letter?</b></p> <p>11       MR. MORAG: Which words? All of them?</p> <p>12       <b>Q. The words "or securities of</b></p> <p>13 <b>substantially the same nature and value."</b></p> <p>14       A. My recollection of the events for</p> <p>15 that, following on the discussion which led to</p> <p>16 the limiting of this provision to 769 million of</p> <p>17 securities, that Harvey Miller raised the</p> <p>18 question whether or not it was clear that we</p> <p>19 could agree to this.</p> <p>20       And I told him that I was not aware of</p> <p>21 a limitation, particularly to the extent as had</p> <p>22 been represented, that the 769 million dollars</p> <p>23 was excess to the level that Lehman was required</p> <p>24 to reserve under 3-3 as of that date, and in</p> <p>25 response to the question can we do it, I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 suggested that if there was a concern along</p> <p>3 those lines, which we didn't share -- and I'll</p> <p>4 say only, my recollection is there was a</p> <p>5 question raised about it -- that we say to the</p> <p>6 extent permitted by applicable law and as soon</p> <p>7 as practicable after the closing.</p> <p>8 And because the provision by its terms</p> <p>9 then raised a question about whether or not this</p> <p>10 value was going to be conveyed, because the</p> <p>11 reason this was in here and was the subject of</p> <p>12 discussion was that there was a significant</p> <p>13 erosion or concern about the erosion of value</p> <p>14 and assets that were contemplated to be</p> <p>15 delivered initially but were not available to be</p> <p>16 delivered, and that Lehman identified this as a</p> <p>17 source of value, and so we wanted to make sure</p> <p>18 that that value was conveyed.</p> <p>19 And so as a result of this language,</p> <p>20 it made us think, well, fine, if you can't give</p> <p>21 us these 769 million of securities, give us</p> <p>22 those other securities of a similar nature and</p> <p>23 value.</p> <p>24 That's my recollection of the origins</p> <p>25 of this provision.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>Q. I'll show you a document we have</b></p> <p>3 <b>previously marked as Exhibit 451. Have you seen</b></p> <p>4 <b>that before, sir?</b></p> <p>5 A. I don't recall that I necessarily saw</p> <p>6 precisely this. I do recall that there was a</p> <p>7 representation made that the SEC had approved as</p> <p>8 excess a certain level of value and that there</p> <p>9 was an e-mail. We thought that we were going to</p> <p>10 see an e-mail saying that. Instead, there was</p> <p>11 an e-mail, I recall, but which didn't involve --</p> <p>12 didn't come from the SEC, but reported that it</p> <p>13 was approved.</p> <p>14 I don't think I have seen this</p> <p>15 particular document, and I can't say that I</p> <p>16 recall with precision the numbers for the</p> <p>17 allocations between cash and securities.</p> <p>18 <b>Q. Did you ever discuss Lehman's 15c3</b></p> <p>19 <b>account with Mike Macchiaroli?</b></p> <p>20 A. I don't recall being able -- at the</p> <p>21 time that I sort of first saw this, which I</p> <p>22 believe was on a -- or not this -- I was made</p> <p>23 aware of the e-mail and shown something, I do</p> <p>24 not believe that I spoke to Mike Macchiaroli,</p> <p>25 but as I mentioned at the outset of this, I had</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 earlier had a conversations with Mike which,</p> <p>3 while we didn't discuss specifically the 3-3</p> <p>4 reserve account or the amount that was excess, I</p> <p>5 came away with the impression that he was</p> <p>6 optimistic that there was going to be sufficient</p> <p>7 assets.</p> <p>8 So I did not have a -- I did not have</p> <p>9 a -- I did not have a confirmation from him. I</p> <p>10 didn't have a concern that there would be a</p> <p>11 deficiency, but I did not have an opportunity to</p> <p>12 actually go over this with him.</p> <p>13 <b>Q. So in your earlier conversation with</b></p> <p>14 <b>Mr. Macchiaroli, he was optimistic that there</b></p> <p>15 <b>would be sufficient assets available to pay all</b></p> <p>16 <b>customer claims; is that correct?</b></p> <p>17 A. Yeah. That -- well, I don't think he</p> <p>18 would have -- I don't think he would have -- I</p> <p>19 don't mean to put words in his mouth that he</p> <p>20 would have made a representation to those</p> <p>21 effects, but I came away with an impression that</p> <p>22 he was optimistic that there wouldn't be a</p> <p>23 shortfall.</p> <p>24 <b>Q. And you took from that conversation</b></p> <p>25 <b>that there wouldn't be a shortfall in customer</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>property?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. And you, therefore, expected --</b></p> <p>5 A. Well, I took away that at that point,</p> <p>6 knowing what he knew, that it looked as though</p> <p>7 there wouldn't be. I wouldn't say -- I wouldn't</p> <p>8 characterize it beyond that.</p> <p>9 <b>Q. And he didn't tell you to what extent</b></p> <p>10 <b>there would be any excess?</b></p> <p>11 A. We didn't discuss any quantification.</p> <p>12 <b>Q. Did you have any discussions with</b></p> <p>13 <b>anyone at the SEC concerning the reserve account</b></p> <p>14 <b>or any excess in the reserve account?</b></p> <p>15 MR. MORAG: Objection, asked and</p> <p>16 answered.</p> <p>17 A. I don't recall.</p> <p>18 <b>Q. Now, you were responding to a Weil</b></p> <p>19 <b>question. Was it Harvey Miller who said can we</b></p> <p>20 <b>do it?</b></p> <p>21 A. I believe it was Harvey Miller, yes.</p> <p>22 <b>Q. What he was referring to is the</b></p> <p>23 <b>transfer from the 3-3 account?</b></p> <p>24 A. Yes. He was, he was raising the</p> <p>25 question as to whether there might be a</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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limitation on this transfer.

**Q. And did you understand that there was 1.7 billion in the reserve account?**

A. I don't think I recall at that time specifically what the number was. I knew that there was a reserve account, and I knew it was funded. I can't recall at what level it was funded.

**Q. And there was -- one issue was this cash issue that you testified about earlier, right? And that was resolved by people avoiding the issue and simply not transferring the cash to Barclays, correct?**

A. Correct.

**Q. And that left the 700 or 769 million which was government securities?**

A. They were securities, yes.

**Q. And with respect to that, Mr. Miller raised the question can we do it, meaning can we transfer this 769 million from the reserve account to Barclays?**

A. Correct.

**Q. And you said that there was no limit to the extent to which that could be transferred**

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**where there was an excess in the account?**

MR. MORAG: Objection to mischaracterizing. I think he said limitation.

A. What I said was I wasn't aware of a limitation that would prevent them as part of this transaction from effecting that transfer, and I said particularly if it is an excess. I didn't limit it to it being an excess.

**Q. Where there was no excess, where there was in fact a deficiency or shortfall in customer property, were you aware of any limitation on the ability of Lehman to transfer from the reserve account to Barclays?**

A. There is not a limitation identified to me that couldn't necessarily be addressed as part of the transaction. They could -- there is no -- the sale of a business where the customer accounts or some portion of them are going over, I'm not aware of a reason why the SEC and the court couldn't assent to the transfer of those assets if it wanted to.

And one would have inferred from the documents that as part of the assets of the  
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business that was being sold, that that had in fact been approved in a transaction approved by the court and to which the SEC gave no objection.

**Q. And that would have involved then transferring -- where there was a shortfall or deficiency, the transfer of 769 million would have to come from customer property; isn't that correct?**

MR. MORAG: Object to the form.

A. Not necessarily.

**Q. Well, the transfer of that amount to Barclays would mean that 769 million would not be available to satisfy customer claims?**

A. That's not -- whether or not Lehman would have been under-reserved going forward, when it was in liquidation mode, is an entirely different question that would not necessarily -- if these assets were in the account but this account was required to have more, those assets would still be assets of Lehman, that as part of this transaction could have been approved to be transferred to Barclays as part of the business that it was acquiring.

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**Q. And it was your view that could have been done regardless of whether that left customers, remaining customers short by the amount of 769 million?**

A. That's not what I said. I said that could be done even if as a result Lehman had a deficit in its reserve account.

**Q. I know that's what you said. But my question is, where there is such a deficit and the transfer of these assets means that the customers do not have access to that 769 million, and that means that --**

A. You know, those assets may have had -- as the deal was approved, it was represented that there were other assets that Lehman had. The assets that can be made -- as I'm sure you are aware, the assets that can be made available to customers in satisfaction of their claims are not limited to what is in the 15c3-3 account. That is a regulatory construct that does not limit the recourse of customers.

So I reject the premise that the transfer of that would necessarily have resulted in a shortfall.

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<p>1 ROSEN</p> <p>2 <b>Q. And leaving aside the whole construct</b></p> <p>3 <b>and whole premise, my only question is, you were</b></p> <p>4 <b>not aware of any limitation, even in the</b></p> <p>5 <b>event --</b></p> <p>6 A. I wasn't, I wasn't thinking about all</p> <p>7 of the -- parsing all of the scenarios. There</p> <p>8 was nothing on the face of this agreement that</p> <p>9 to my mind couldn't be accomplished, and from my</p> <p>10 perspective, caveating it with the language "the</p> <p>11 extent permitted by applicable law," even though</p> <p>12 you could argue that that's implicit, was a</p> <p>13 concession that we could readily make in order</p> <p>14 to complete the deal.</p> <p>15 <b>Q. So given that concession, you didn't</b></p> <p>16 <b>think through what would happen if the transfer</b></p> <p>17 <b>left unavailable property for customers?</b></p> <p>18 MR. MORAG: Object to the form.</p> <p>19 A. No, I reject that characterization.</p> <p>20 It was not necessarily the case that there would</p> <p>21 have been any deficit for customers as a result.</p> <p>22 And as a result, because I didn't have the</p> <p>23 information available to evaluate it, I did not</p> <p>24 engage in a hypothetical conjecture as to</p> <p>25 whether -- under what circumstances or set of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 facts there would be a problem.</p> <p>3 But from my perspective, but for the</p> <p>4 concern, which was really a procedural concern</p> <p>5 as a matter of caution, as I understood it from</p> <p>6 Harvey Miller, I believed that these assets</p> <p>7 arguably were intended to be transferred, were</p> <p>8 intended to be transferred as part of the assets</p> <p>9 of the business.</p> <p>10 <b>Q. In any event, you and the Barclays</b></p> <p>11 <b>side of the house agreed to set aside the cash</b></p> <p>12 <b>issue by taking the billion dollars in cash out</b></p> <p>13 <b>of the deal, correct?</b></p> <p>14 A. By taking the billion dollars out of</p> <p>15 the deal?</p> <p>16 <b>Q. Yeah. The 1 billion dollars in the</b></p> <p>17 <b>bank account was not being transferred as part</b></p> <p>18 <b>of the reserve account?</b></p> <p>19 A. Let me say this. This provision, this</p> <p>20 provision doesn't call for the transfer of that.</p> <p>21 I will leave it to the lawyers to argue what the</p> <p>22 implications of that might be.</p> <p>23 <b>Q. And as to the remaining issue as</b></p> <p>24 <b>raised by Mr. Miller about can we do it with</b></p> <p>25 <b>respect to the government securities, somebody</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>proposed that that issue would be resolved by</b></p> <p>3 <b>inserting the words "to the extent permissible</b></p> <p>4 <b>by law"?</b></p> <p>5 A. My recollection is that that was me.</p> <p>6 <b>Q. Now, did all this happen in a hallway</b></p> <p>7 <b>conversation?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Who was present?</b></p> <p>10 A. I don't have a clear recollection</p> <p>11 other than Harvey Miller was there, Vic Lewkow</p> <p>12 was there. I think Dana Fleischman may have</p> <p>13 been there at least for some portion of it. And</p> <p>14 there were others huddling around, but I don't</p> <p>15 have a clear recollection, and to be perfectly</p> <p>16 candid, because I wasn't involved in the</p> <p>17 negotiation of this transaction from the very</p> <p>18 beginning, I was not as -- and I was mostly</p> <p>19 troubleshooting specific issues, particularly</p> <p>20 those relating to the clearing arrangements, I</p> <p>21 was not as familiar with the lawyers from the</p> <p>22 other side, so I could not have readily, as</p> <p>23 readily identified them.</p> <p>24 <b>Q. How long did the, did this hallway</b></p> <p>25 <b>huddling session last?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. I honestly don't know. More than a</p> <p>3 couple of minutes, less than a couple of hours.</p> <p>4 <b>Q. And can you tell me what you recall</b></p> <p>5 <b>being said in the course of this hallway</b></p> <p>6 <b>conversation?</b></p> <p>7 A. Pretty much what I have just described</p> <p>8 to you, that there was a group already there</p> <p>9 when I arrived. I guess some predecessor</p> <p>10 language to this was being reviewed, and Harvey</p> <p>11 Miller, as I said, raised the question whether</p> <p>12 there might be limits under applicable law, and</p> <p>13 I said that I wasn't aware of any, but to the</p> <p>14 extent that they exist, and it would address</p> <p>15 your concern, we can provide that the transfer</p> <p>16 be to the extent permitted by applicable law.</p> <p>17 But if there was such a constraint, that that</p> <p>18 basically 769 million dollars in securities</p> <p>19 would come from somewhere else.</p> <p>20 And can I remember exactly what was</p> <p>21 said, whether it was a grunt or a nod or a</p> <p>22 smile, I don't remember, but I remember coming</p> <p>23 away from the conversation feeling that we had</p> <p>24 sort of resolved the point.</p> <p>25 <b>Q. Who was the person who gave the --</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2   <b>manifested assent with the grunt or nod or</b></p> <p>3   <b>smile?</b></p> <p>4       A. I could be wrong, my recollection was</p> <p>5   that it was Harvey Miller, but I could be wrong.</p> <p>6       <b>Q. Did Mr. Miller agree to your proposal</b></p> <p>7   <b>that "to the extent permitted by applicable law"</b></p> <p>8   <b>would be inserted into the --</b></p> <p>9       A. That was my understanding, yes.</p> <p>10      <b>Q. Did he also agree to avoid the cash</b></p> <p>11   <b>issue by having this provision not call for the</b></p> <p>12   <b>transfer of a billion dollars in cash?</b></p> <p>13      A. I believe he did.</p> <p>14      <b>Q. And did that also happen in this</b></p> <p>15   <b>hallway conversation?</b></p> <p>16      A. It may have been two different</p> <p>17   conversations or it may have been a continuing</p> <p>18   conversation. Again, I was called out to deal</p> <p>19   with other issues constantly, issues that were</p> <p>20   being dealt with in different rooms and on</p> <p>21   different floors, so I don't have a clear</p> <p>22   recollection of precisely what the progress, the</p> <p>23   progression of discussions were.</p> <p>24      The cash conversation clearly preceded</p> <p>25   this. And there may have been a break before</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2   this issue, it may have been that drafts were</p> <p>3   prepared and exchanged to reflect the first</p> <p>4   issue, and then the second issue was raised. I</p> <p>5   just don't have a clear recollection of it.</p> <p>6       <b>Q. We seem to have the cash issue, you</b></p> <p>7   <b>say maybe came up first, and then we have a</b></p> <p>8   <b>second issue is, can we do it, as in</b></p> <p>9   <b>transferring the 769, and that gets resolved</b></p> <p>10   <b>with your proposed language "to the extent</b></p> <p>11   <b>permissible by applicable law," right?</b></p> <p>12      MR. HUME: Objection, mischaracterizes</p> <p>13   his testimony.</p> <p>14      A. Do you want to repeat the question?</p> <p>15      <b>Q. If the first issue is the cash issue,</b></p> <p>16   <b>the second issue is the can we do it question</b></p> <p>17   <b>that Mr. Miller raised?</b></p> <p>18      A. Transfer, there was a discussion about</p> <p>19   the transfer of securities.</p> <p>20      <b>Q. Which gets resolved with your proposed</b></p> <p>21   <b>language?</b></p> <p>22      A. Yes. And the documentation of it gets</p> <p>23   resolved.</p> <p>24      <b>Q. Do I understand you to be saying there</b></p> <p>25   <b>was also a third issue in that somebody said if</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2   <b>for any reason it is not permissible to transfer</b></p> <p>3   <b>the government securities from the reserve</b></p> <p>4   <b>account, Lehman has to make that up to Barclays</b></p> <p>5   <b>with securities of some other value?</b></p> <p>6      A. I'm not sure I would describe it as a</p> <p>7   third issue, but as an adjunct to the second</p> <p>8   issue, that if the securities, these 769 million</p> <p>9   were not available, some other 769 million</p> <p>10   dollars of securities would be made available.</p> <p>11      <b>Q. How did that, whatever you want to</b></p> <p>12   <b>call it, an adjunct to the second issue or a</b></p> <p>13   <b>third issue, how did that issue get raised?</b></p> <p>14      A. How did it get raised?</p> <p>15      MR. HUME: Objection, asked and</p> <p>16   answered.</p> <p>17      A. Someone on our side, maybe me, maybe</p> <p>18   somebody else who was there, I don't have a</p> <p>19   clear recollection on the second point, but</p> <p>20   said, well, if there is any contingency to the</p> <p>21   769 from the 3-3, we get them from somewhere.</p> <p>22      The whole purpose of this, again, was</p> <p>23   to say -- we were identifying a source of value</p> <p>24   that was in the deal in the light of other</p> <p>25   evaporating value, and so it was important to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2   the Lehman side -- I am sorry, it was important</p> <p>3   to the Barclays side that if this wasn't</p> <p>4   available, some other asset would be available.</p> <p>5      <b>Q. Was there any discussion about the</b></p> <p>6   <b>implications for customer property claims --</b></p> <p>7      A. No, there was no discussion about</p> <p>8   customer property claims.</p> <p>9      <b>Q. And there was no discussion of the</b></p> <p>10   <b>implications on customers of transferring 769</b></p> <p>11   <b>million --</b></p> <p>12      A. None of us, none of us on the Barclays</p> <p>13   side had anything like the information that</p> <p>14   would have been necessary to evaluate that, to</p> <p>15   even raise questions about it. That information</p> <p>16   was not available, and there was no way for it</p> <p>17   to become available and to be discussed and</p> <p>18   analyzed in a time frame that would have enabled</p> <p>19   the deal to close.</p> <p>20      MR. MORAG: Let him finish the</p> <p>21   questions.</p> <p>22      <b>Q. Can you tell me -- you came away from</b></p> <p>23   <b>this meeting with an understanding that Harvey</b></p> <p>24   <b>Miller or someone on the Weil side had</b></p> <p>25   <b>manifested assent to the proposition that if the</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2   <b>government securities in the reserve account</b></p> <p>3   <b>weren't available, some alternative similar</b></p> <p>4   <b>securities would be provided.</b></p> <p>5       <b>Can you tell me, how are you -- how do</b></p> <p>6   <b>you know that Mr. Miller or his colleague was</b></p> <p>7   <b>agreeing to that unconditional transfer as</b></p> <p>8   <b>opposed to his nod, his grunt, his smile,</b></p> <p>9   <b>whatever you recall, meaning nothing more than</b></p> <p>10   <b>this conversation is at an end or that we agree</b></p> <p>11   <b>to your proposed language "to the extent</b></p> <p>12   <b>permitted by applicable law"?</b></p> <p>13       MR. MORAG: Object to the form.</p> <p>14       A. I don't think I have more to add, more</p> <p>15       than what I have already said, except to say</p> <p>16       that a draft was provided to us by Weil that</p> <p>17       reflected that agreement.</p> <p>18       <b>Q. You got a draft from Weil which</b></p> <p>19   <b>provided that Barclays -- that Lehman would</b></p> <p>20   <b>transfer to Barclays 769 million from the</b></p> <p>21   <b>reserve account or securities of a substantially</b></p> <p>22   <b>similar nature. Are you aware of that?</b></p> <p>23       A. I recall that.</p> <p>24       <b>Q. What was the reaction on the Barclays'</b></p> <p>25   <b>side when you got that draft?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2       A. We didn't know what "or nature" meant</p> <p>3       and whether it was clear that it meant that they</p> <p>4       would be of equivalent value. So we added the</p> <p>5       words "or value." I believe I may have made</p> <p>6       that change.</p> <p>7       <b>Q. Did you have any discussion with</b></p> <p>8   <b>anyone at Weil to find out what they meant by</b></p> <p>9   <b>adding the words "substantially similar,"</b></p> <p>10   <b>without the words "in value"?</b></p> <p>11       MR. MORAG: Objection, foundation.</p> <p>12       You have not established that Weil added</p> <p>13       these words as opposed to mistyped or didn't</p> <p>14       type the Cleary proposal.</p> <p>15       <b>Q. Well, let me back up. I thought you</b></p> <p>16   <b>said you were provided with a draft from Weil</b></p> <p>17   <b>that included the words "substantially similar</b></p> <p>18   <b>nature"?</b></p> <p>19       A. I believe I was shown a draft that</p> <p>20       included that language, an interim draft that</p> <p>21       included that language.</p> <p>22       <b>Q. Do you know who provided you that</b></p> <p>23   <b>draft?</b></p> <p>24       A. I don't have a clear recollection, but</p> <p>25       my assumption is it was Weil. That's my</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2   assumption.</p> <p>3       <b>Q. Did you have any discussion with Weil</b></p> <p>4   <b>about that draft and specifically about those</b></p> <p>5   <b>words in that draft?</b></p> <p>6       A. Yes, in the sense that we provided a</p> <p>7       markup of it with the words "or value," and that</p> <p>8       seems to have been accepted as an appropriate</p> <p>9       clarification of the agreement that we had</p> <p>10       reached earlier and reflected in the next</p> <p>11       turnover of documents.</p> <p>12       <b>Q. Any communication between the Cleary</b></p> <p>13   <b>and the Weil folk, other than --</b></p> <p>14       A. Yes. The language "or value," which I</p> <p>15       think speaks for itself.</p> <p>16       <b>Q. I'm just saying, anything beyond that?</b></p> <p>17       A. I don't think there needed to be</p> <p>18       anything beyond that.</p> <p>19       <b>Q. And have you heard from your partners</b></p> <p>20   <b>whether they are aware of anything beyond that?</b></p> <p>21       A. I don't have a recollection of</p> <p>22       discussing it.</p> <p>23       MR. HUME: Are you going to finish</p> <p>24       before lunch or should we take a break for</p> <p>25       lunch or take another break? Either way I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2   think we can use another break. We have</p> <p>3   been going for an hour and a half.</p> <p>4       MR. MAGUIRE: Why don't we take a</p> <p>5       break, and if lunch is ready, this is a fine</p> <p>6       time for lunch. I certainly will continue</p> <p>7       after lunch.</p> <p>8       MR. HUME: You will.</p> <p>9       MR. MAGUIRE: Yes. I still have quite</p> <p>10       a bit to go.</p> <p>11       (Recess)</p> <p>12   BY MR. MAGUIRE:</p> <p>13       <b>Q. Sir, before the break, you were</b></p> <p>14   <b>describing the hallway conversation at Weil</b></p> <p>15   <b>Gotshal's offices concerning the 3-3 account,</b></p> <p>16   <b>and I note that is a subject of paragraph 7 of</b></p> <p>17   <b>your declaration; is that correct?</b></p> <p>18       A. Yes.</p> <p>19       <b>Q. In paragraph 7, and you don't refer to</b></p> <p>20   <b>the contingency that you described in your</b></p> <p>21   <b>testimony earlier today concerning what would</b></p> <p>22   <b>happen if Barclays did not get or Lehman could</b></p> <p>23   <b>not transfer government securities from the 3-3</b></p> <p>24   <b>account. Do you see that?</b></p> <p>25       A. Um-hm.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 <b>Q. Can you tell me why you did not refer</b></p> <p>3 <b>to that contingency in your declaration?</b></p> <p>4 A. No.</p> <p>5 <b>Q. Earlier in your declaration, in</b></p> <p>6 <b>paragraph 5, you refer both to the removed</b></p> <p>7 <b>language that we have discussed earlier, the</b></p> <p>8 <b>language that starts, "any and all property" --</b></p> <p>9 <b>you remember that? -- and also to the</b></p> <p>10 <b>parenthetical that ultimately ends up being</b></p> <p>11 <b>inserted in the clarification letter, that's a</b></p> <p>12 <b>parenthetical that reads, "and any property that</b></p> <p>13 <b>may be held to secure obligations under such</b></p> <p>14 <b>derivatives."</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. Can you tell me why when you posed the</b></p> <p>17 <b>parenthetical, you didn't simply put the earlier</b></p> <p>18 <b>language in the parenthetical?</b></p> <p>19 A. The only reason is that it was -- the</p> <p>20 original language had been obviously subject to</p> <p>21 modification, and I didn't want to get</p> <p>22 embroiled -- we didn't have time to get</p> <p>23 embroiled in sending back language and having</p> <p>24 extensive negotiations.</p> <p>25 So the purpose of doing it this way</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 was to do it as simply and clearly as possible</p> <p>3 and not resurrect language that might have</p> <p>4 been -- for other reasons raised issues in</p> <p>5 people's minds for reasons unrelated to the</p> <p>6 point that was intended to be conveyed here,</p> <p>7 clarified here.</p> <p>8 <b>Q. By inserting the parenthetical, did</b></p> <p>9 <b>you mean anything different from what you say in</b></p> <p>10 <b>your declaration, paragraph 5 was documenting</b></p> <p>11 <b>the business deal?</b></p> <p>12 MR. MORAG: Object to the form.</p> <p>13 <b>Q. In other words, did you mean anything</b></p> <p>14 <b>different in the language in the parenthetical</b></p> <p>15 <b>from the earlier language that had been removed?</b></p> <p>16 MR. HUME: Objection, I think you are</p> <p>17 really calling for him to interpret the</p> <p>18 contract now.</p> <p>19 MR. MAGUIRE: No, no, I am asking what</p> <p>20 he meant at the time.</p> <p>21 A. What I will say is that I meant to</p> <p>22 express the thought reflected in the markup, but</p> <p>23 I didn't parse, because I didn't have time to</p> <p>24 parse the differences in the wording. And this</p> <p>25 was intended to pick up everything in a shorter</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 and more concise formulation.</p> <p>3 <b>Q. Do you know how much in value terms</b></p> <p>4 <b>this parenthetical picked up?</b></p> <p>5 MR. MORAG: Objection to the form.</p> <p>6 <b>Q. In other words, do you know how much</b></p> <p>7 <b>property there actually was that was held to</b></p> <p>8 <b>secure obligations under such derivatives?</b></p> <p>9 MR. HUME: The question is whether he</p> <p>10 knows today?</p> <p>11 <b>Q. Did you know at the time what the</b></p> <p>12 <b>dollar amount of that was?</b></p> <p>13 MR. MORAG: And I object, lack of</p> <p>14 foundation.</p> <p>15 Go ahead.</p> <p>16 A. I did not know the precise number, no.</p> <p>17 <b>Q. Did you have a general understanding?</b></p> <p>18 A. I would have assumed it was a</p> <p>19 significant amount of, significant amount of</p> <p>20 money. Lehman was a very significant, one of</p> <p>21 the largest investment banks. They had a very</p> <p>22 significant business, and I would have assumed</p> <p>23 that with a significant business would come</p> <p>24 significant customer property to margin the</p> <p>25 proprietary and customer activities that were</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 going on.</p> <p>3 So the bigger it was, the more</p> <p>4 concerned I was about it.</p> <p>5 <b>Q. Did you understand that the customer</b></p> <p>6 <b>margin was in the billions of dollars?</b></p> <p>7 A. I didn't have specific knowledge of</p> <p>8 it, but it wouldn't surprise me to hear that. I</p> <p>9 expected it to be a large number.</p> <p>10 <b>Q. Did you understand what the</b></p> <p>11 <b>proprietary margin was that was in the billions</b></p> <p>12 <b>of dollars?</b></p> <p>13 A. I would have expected it to be of that</p> <p>14 kind of magnitude, but I didn't know exactly</p> <p>15 what it was.</p> <p>16 <b>Q. Do you know whether the folks at Weil</b></p> <p>17 <b>had an understanding as to how much property was</b></p> <p>18 <b>picked up by the parenthetical?</b></p> <p>19 MR. MORAG: Object to the form and</p> <p>20 foundation.</p> <p>21 A. All I'll say about that is that they</p> <p>22 had more ready access to that information</p> <p>23 through their client than we had.</p> <p>24 <b>Q. What about the trustee, do you know</b></p> <p>25 <b>whether the trustee had any knowledge about the</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

**ROSEN**

**amount of the property that was the subject of that parenthetical?**

A. I can't speak to the state of mind of the trustee, but I assume that as part of this, the trustee was looking at what was there.

**Q. Is your answer the same with respect to the creditors committee?**

A. I've had no direct interaction with them, the creditors committee, such that I can recall.

MR. MAGUIRE: We will mark as Exhibit 623 a document dated September 19, 2008, Bates stamped GCGSH0002699 through 700.

(Exhibit 623, document Bates stamped CGSH0002699 through 700 marked for identification, as of this date.)

A. Can I back up a second to your previous question? In terms of what the trustee and Weil knew about the amount of the margin, they would have known -- they were copied on e-mails which -- from OCC just in the context of OCC that suggested that just the pays and collects from -- for the Monday would have been TSG Reporting - Worldwide 877-702-9580

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on the order of several hundreds of millions of dollars, which would have suggested an extraordinarily large amount of positions and therefore margin associated with them.

So they could have inferred that it would be an extremely significant amount of margin.

**Q. When you refer to the pays and collects, what are you referring to?**

A. The accounts are marked on a periodic basis by the clearinghouse, and it was sort of what additional flows are coming in or going out between the clearinghouse and the clearing member as a result of the changes in the marks or the exercises of contracts or whatever other activity is being conducted in the account.

**Q. And what's a pay?**

A. Well, it depends on what your perspective is, but some amounts are paid by the clearinghouse to the clearing member, and there are amounts that are paid, so if you are receiving the funds, you are the collect, and if you are paying the funds, you're the pay.

**Q. Do you know whether the trustee or**  
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**Weil actually received any information concerning pays or collects at the OCC prior to the closing?**

A. I believe they were copied on e-mail correspondence from the OCC, but that may be a misrecollection, but I believe there was a lot of correspondence including another e-mail that referred to a billion dollars and that confirmed that OCC was going to transfer all of that to Barclays, as we would have all expected.

**Q. And did you receive any response to Exhibit 623?**

A. I don't have a clear recollection of a specific response to this except that the SEC, after this interim exchange of communications regarding DTCC, stepped up to support the transaction, so presumably if they had had a problem, they would have raised it in connection with their support of the transaction.

**Q. We will mark as Exhibit 624 a document Bates stamped DTCC 00126 through 00198.**

(Exhibit 624, document Bates stamped DTCC 00126 through 00198 marked for identification, as of this date.)

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**ROSEN**

**Q. Is this an e-mail you received from DTCC on or about September 20, 2008?**

A. Appears so.

**Q. It is a lengthy document. I am really going to ask you only about one of the attachments, the contents.**

MR. MORAG: Just for the record, there do appear to be other e-mails starting at page 180 that may or may not be part of this. Since they are dated later, I don't know that they could have been part of the original e-mail.

**Q. I'm not going to ask you about anything after 178. But if you could take a look at the pages that begin 175.**

A. Um-hm.

**Q. You will see on page 176, the first paragraph concerns assumption of accounts.**

A. Right.

**Q. Was there at one point in time a discussion whereby Barclays was assuming the DTC -- the Lehman accounts at DTCC?**

MR. MORAG: Object to the form.

MR. HUME: Object to the form.

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<p>1 ROSEN</p> <p>2 A. I am sorry, can you repeat the</p> <p>3 question.</p> <p>4 <b>Q. Yes. With respect to paragraph 1 at</b></p> <p>5 <b>the top of page 176, you see that's entitled</b></p> <p>6 <b>"Assumption of Accounts." Do you recall that</b></p> <p>7 <b>drafts were exchanged which provided that</b></p> <p>8 <b>Barclays would assume the Lehman accounts at</b></p> <p>9 <b>DTC?</b></p> <p>10 A. I believe in this form, I don't</p> <p>11 believe that Barclays had at this point agreed</p> <p>12 to do that. I know I got these documents. I</p> <p>13 know Michael Mazzuchi was looking at them. I</p> <p>14 don't recall focusing on them, because at the</p> <p>15 time that we got these, our client had not</p> <p>16 decided that it was going to assume the</p> <p>17 accounts. I said it was a potential outcome,</p> <p>18 but it was not one that had been agreed.</p> <p>19 <b>Q. You will see paragraph 2 is entitled</b></p> <p>20 <b>"Excluded Assets and Liabilities." Did you have</b></p> <p>21 <b>any discussions with DTCC concerning excluding</b></p> <p>22 <b>certain assets?</b></p> <p>23 MR. MORAG: Object to the form.</p> <p>24 A. There were discussions with DTCC about</p> <p>25 what was in the accounts. There were</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 discussions about whether or not or the extent</p> <p>3 to which Barclays was going to assume</p> <p>4 responsibilities for liabilities in the</p> <p>5 accounts, and there were discussions about, in</p> <p>6 recognition that there were assets that Barclays</p> <p>7 was getting as part of the transaction and</p> <p>8 assets that Barclays was not getting as part of</p> <p>9 the transaction, and all of those factors played</p> <p>10 into sort of the crucible of considerations as</p> <p>11 to how this would be -- how this situation with</p> <p>12 DTCC was going to be resolved.</p> <p>13 But I think it was not until Sunday</p> <p>14 night that there was a meeting of the minds as</p> <p>15 to how this was going to be handled. There was</p> <p>16 a first amendment which reflected an arrangement</p> <p>17 which ultimately was -- couldn't be performed</p> <p>18 because of the unavailability of certain</p> <p>19 securities to be used as part of the -- what do</p> <p>20 you call it? -- as part of the credit support</p> <p>21 for DTCC.</p> <p>22 <b>Q. You referred to discussions with DTCC</b></p> <p>23 <b>concerning assets that Barclays was getting and</b></p> <p>24 <b>assets that Barclays was not taking. Can you</b></p> <p>25 <b>tell me what you know of those discussions?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 A. What I said was there were assets that</p> <p>3 Barclays was taking and there were assets --</p> <p>4 there were assets that Barclays was not taking,</p> <p>5 and there were discussions with DTCC about</p> <p>6 should -- what the position at the DTCC</p> <p>7 subsidiary clearing organizations were, but I</p> <p>8 think in the end, they didn't proceed to a point</p> <p>9 where Barclays was comfortable assuming</p> <p>10 greater -- assuming responsibility for the</p> <p>11 financial obligations that were associated with</p> <p>12 the accounts.</p> <p>13 <b>Q. I'm not going to ask you now about the</b></p> <p>14 <b>assumption of liabilities or anything about</b></p> <p>15 <b>assuming liabilities. I just want to ask you</b></p> <p>16 <b>what you recall of your involvement in any</b></p> <p>17 <b>discussions with DTCC concerning what assets</b></p> <p>18 <b>Barclays was taking and what assets Barclays was</b></p> <p>19 <b>not taking from the Lehman accounts at DTCC.</b></p> <p>20 A. Those discussions were held by an</p> <p>21 operations team, and I don't believe that there</p> <p>22 was a focus with DTCC on that. The focus on</p> <p>23 what assets were being sold and what were not</p> <p>24 and what liabilities was the deal documentation.</p> <p>25 DTCC was not a part of the negotiations about</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 what Barclays was and wasn't taking, but there</p> <p>3 were extensive meetings about what the</p> <p>4 liabilities might be and what kind of recourse</p> <p>5 was going to be -- you know, what additional</p> <p>6 credit support DTCC might look for.</p> <p>7 <b>Q. Were you aware that a Barclays due</b></p> <p>8 <b>diligence team visited DTCC's offices?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. To review the assets that were there?</b></p> <p>11 MR. MORAG: Object to the form.</p> <p>12 A. I would say that there was a due</p> <p>13 diligence team that was trying to learn as much</p> <p>14 as it could about the accounts. But I'm not</p> <p>15 sure that there weren't potentially multiple</p> <p>16 objectives from their perspective.</p> <p>17 <b>Q. Who, to your knowledge, was part of</b></p> <p>18 <b>that operations team?</b></p> <p>19 A. Gerard Larocca is the individual that</p> <p>20 I corresponded with, but I believe he had an</p> <p>21 extensive team.</p> <p>22 <b>Q. Anyone else you can remember?</b></p> <p>23 A. I don't remember the names in here,</p> <p>24 no. Maybe John Rodefled.</p> <p>25 <b>Q. Did any of the Barclays operations</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

**ROSEN**

**team members report to you?**

A. Well, we communicated. I wouldn't have described what they did as reporting to me.

**Q. Did any of them fill you in on any of their specific findings from their due diligence?**

A. I think they reported to --

MR. MORAG: It is a yes or no question on that. The substance may be privileged, so I think the answer is -- calls for a yes or a no.

A. That team did not report findings to me.

**Q. When you say "that team," you're referring to the due diligence team?**

A. The team, the operations team that was at DTCC.

**Q. Did you hear through any other source the findings of the Barclays due diligence team?**

MR. MORAG: Yes or no.

A. No.

**Q. Did you participate in any of the phone calls between any Barclays operations people on that due diligence team and**

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**representatives of DTCC on Sunday, the Sunday night?**

A. I may have participated in one call or sort of been in and out of the call while dealing with other issues, but I'm -- I don't have a clear recollection.

**Q. Do you recall anything of that call?**

A. I don't recall the specifics of the call.

**Q. Do you recall when it happened?**

A. At what time on Sunday, no.

**Q. Do you recall who participated?**

A. I don't have a specific recollection. I could speculate based on who was involved in the conversations, but I don't have a specific recollection beyond, you know, it would have included Archie Cox and Jonathan Hughes, Gerard Larocca. As to the other participants, I just don't recall.

**Q. Do you recall anything that was said in that call?**

A. No. I recall the results of the call, but I don't recall the specific discussion.

**Q. Do you know who led the call on the**  
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**Barclays side?**

A. I'm not sure that there was a leader. There was a group convened to share information and reach conclusions.

**Q. Do you recall any Barclays persons speaking on that call?**

A. Since it was an internal Barclays call, yes, I mean there was an exchange of --

MR. MORAG: Wait.

MR. HUME: This is --

**Q. We may have misunderstood each other. I'm not asking about an internal Barclays call. I'm asking about your -- whether you have any knowledge of a call between Barclays operations people and folks at DTCC on the Sunday night.**

A. I am sorry, no.

**Q. Did you participate in any telephone call with anyone from DTCC on the Sunday?**

A. Yes.

**Q. How many calls?**

A. I honestly don't remember, but there could have been two or three or maybe three or four, or a long call that I walked in and out of. But there were continued discussions until

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quite late at night with DTCC.

**Q. Can you tell me on the Barclays side, who were the Barclays participants?**

A. Archie Cox, Jonathan Hughes, myself, Michael Klein. I -- Gerard Larocca, although I'm not sure that he was on all of the calls or on the calls all of the time.

**Q. And taking the wider Barclays group, you would include yourself as participating in those calls?**

A. I was in a room for a lot of those calls, not all of them.

**Q. Did you say anything on any of those calls?**

A. Did I say anything on those calls? I may very well have, but I don't have specific recollection of what I may have said.

**Q. Any general recollection?**

A. I really can't recall.

**Q. Anyone else from Cleary who participated in any of these calls?**

A. On Sunday night, I don't think so.

**Q. Do you recall anything that Archie Cox said on any of these calls?**

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<p>1                   <b>ROSEN</b></p> <p>2           A. He conveyed Barclays' reluctance to</p> <p>3           assume the obligation to provide any form of</p> <p>4           guarantee beyond the 250 million dollars</p> <p>5           representing the holdback of that payment that</p> <p>6           would otherwise have been made to Lehman under</p> <p>7           the APA, and there would have been -- there was</p> <p>8           a call -- there was a point at which he said, he</p> <p>9           conveyed to DTCC that because Barclays was not</p> <p>10          willing to accept more liability than that, they</p> <p>11          would not be accepting the transfer of those</p> <p>12          accounts.</p> <p>13          <b>Q. Anything else you remember Mr. Cox</b></p> <p>14          <b>saying in any of the Sunday night calls?</b></p> <p>15          A. I really don't recall specifics.</p> <p>16          There was undoubtedly a lot more discussed and a</p> <p>17          lot more give and take, but candidly, I cannot</p> <p>18          remember the specifics of the dialogues. There</p> <p>19          would have been conversations about, gee, does</p> <p>20          DTCC really need all the credit support that it</p> <p>21          is asking for, can't it get comfortable, it has</p> <p>22          better access to the information than Barclays</p> <p>23          does. It would have been of that nature, but I</p> <p>24          just, sitting here now, can't recall the</p> <p>25          conversations.</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           <b>Q. Anything you recall Jonathan Hughes</b></p> <p>3           <b>saying?</b></p> <p>4           A. Not really. I don't have a specific</p> <p>5           recollection. I think -- I'm sure that he</p> <p>6           reiterated or articulated many of the same</p> <p>7           themes as Archie Cox, because the Barclays view</p> <p>8           was, at that point, pretty well settled that</p> <p>9           they were not prepared to assume additional</p> <p>10          potentially substantial liabilities.</p> <p>11          <b>Q. Anything you recall Mr. Hughes saying</b></p> <p>12          <b>beyond what you said?</b></p> <p>13          A. Not specific words, no.</p> <p>14          <b>Q. Anything you recall Michael Klein</b></p> <p>15          <b>saying?</b></p> <p>16          A. No.</p> <p>17          <b>Q. Anything you recall Mr. Larocca</b></p> <p>18          <b>saying?</b></p> <p>19          A. Well, there were a lot of</p> <p>20          conversations also about sort of the pipes and</p> <p>21          the plumbing and sort of the operational aspects</p> <p>22          of what was going to be the mechanism for DTC</p> <p>23          to effect the transfers of securities that needed</p> <p>24          to be effected as part of the transactions, what</p> <p>25          accountant are they going to go to or through,</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2           or how that was going to be hooked up or</p> <p>3           handled, but I was not focused on those because</p> <p>4           I regarded them as essentially operational</p> <p>5           matters.</p> <p>6           <b>Q. Was that an issue that was in</b></p> <p>7           <b>Mr. Larocca's purview?</b></p> <p>8           A. Yes, I think so -- yes.</p> <p>9           <b>Q. Did he speak to that?</b></p> <p>10          A. He did, and he may have delegated some</p> <p>11          of the details of it to people who reported to</p> <p>12          him.</p> <p>13          <b>Q. Do you recall Mr. Larocca saying in</b></p> <p>14          <b>any call on Sunday night or early Monday morning</b></p> <p>15          <b>we are not taking anything?</b></p> <p>16          A. I do not recall Gerard Larocca saying</p> <p>17          that or anyone else saying that, because it</p> <p>18          was -- the whole purpose of the DTC endeavor was</p> <p>19          to resolve their concerns in a manner that would</p> <p>20          enable them to effect the transfers of assets</p> <p>21          that were necessary to consummate the deal. So</p> <p>22          it would have been a ludicrous thing for anyone</p> <p>23          to have said, because otherwise, why did we need</p> <p>24          to be dealing with DTCC?</p> <p>25          <b>Q. Was anyone from DTCC present for any</b></p> <p>          TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           <b>of these discussions?</b></p> <p>3           A. These -- they were on the phone.</p> <p>4           There was nobody from DTCC in the room at Weil's</p> <p>5           offices.</p> <p>6           <b>Q. Who did you understand was</b></p> <p>7           <b>participating from DTCC?</b></p> <p>8           A. My understanding was that it was Larry</p> <p>9           Thompson, the general counsel; his deputy, Isaac</p> <p>10          Montal, Shelly Hirshon, their outside counsel,</p> <p>11          and Don Donahue, the chairman of DTCC, at least</p> <p>12          at some -- at least in some portions of the</p> <p>13          conversation.</p> <p>14          <b>Q. And who was the person who did most of</b></p> <p>15          <b>the talking for DTCC?</b></p> <p>16          A. My recollection was that it was Larry</p> <p>17          Thompson.</p> <p>18          <b>Q. Did you understand at some point, DTCC</b></p> <p>19          <b>was considering issuing a cease to act with</b></p> <p>20          <b>respect to Lehman?</b></p> <p>21          MR. MORAG: Object to the form.</p> <p>22          A. After Barclays had conveyed to DTCC</p> <p>23          that Barclays was not going to accept a transfer</p> <p>24          of the accounts, I believe Larry Thompson</p> <p>25          indicated -- and I don't recall exactly when</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>

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this was -- that they would issue a cease to act, which meant that once the pipeline and these transactions were transferred, DTCC would be liquidating positions and closing out the account and not accepting any other transactions.

And I received a call from Don Donahue to say, you know, if we could avoid doing that, they would prefer to do that, because they hadn't done it before, and which I told him I would convey to the client.

**Q. Do you have an understanding of what the consequences would be for the transaction if the DTCC were to issue a cease to act notice?**

MR. MORAG: Objection to form.

A. My understanding is that it wouldn't have affected the transaction.

**Q. Did you have any discussion with anyone as to whether Barclays could or would close the transaction if DTCC issued a cease to act notice?**

MR. MORAG: Again, Mr. Rosen, if your discussions are with anybody outside of Barclays, you can answer. Not -- if not,  
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say you are not able to answer.

A. Would you mind repeating the question.

**Q. Yes. The question is whether you had any discussion, any conversation with anyone about whether Barclays could or would close the transaction if DTCC were to issue a cease to act.**

MR. MORAG: Do you have a time frame on when the issuance was supposed to be?

A. It really --

**Q. Yes, the Sunday.**

A. Can I just -- let me just say this.

It really depends. Your question presupposes with respect to what point in time the cease to act would take effect.

If -- I did have a conversation with Shari Leventhal at the Fed, which the substance of which was that I expressed my concern that we were not making rapid progress in the negotiations with DTCC toward a resolution in which they would accept a much more limited amount of credit support, and I was worried that we were running out of time, and we thought that it might be helpful to let the Fed know, that we  
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didn't want the Fed to find out at the last minute that this thing was falling apart for reasons unrelated to, you know, the actual negotiation of the deal, that because of a problem with DTCC.

So I spoke to Shari Leventhal and said, if we can't reach a resolution with DTCC and DTCC does not agree to process the transactions, absent other arrangements, we are not going to be able to close this, at least in the manner in which we had contemplated.

And I did have that conversation with her.

**Q. Can you help me out and explain, because I thought you had told us that a cease to act from DTCC would not have affected the transaction, but I thought you also told us --**

A. I also told you it depends at what point they are ceasing to act. And if they cease to act following the processing of the transaction and the transactions that are in their pipeline, we would have been able to close the transaction. If they said as of Saturday, we are ceasing to act and we are not going to  
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accept any other instructions on Monday to transfer customer or proprietary agents, that would have been a very different result than the one which ultimately obtained.

**Q. And when you told us earlier that after Barclays had made clear it was not accepting the transfer of accounts and Larry Thompson responded that DTCC would issue a cease to act, what did you understand the timing of that notice that he was talking about to be?**

A. My understanding was that DTCC was going to issue a cease to act after processing trades in the pipeline, including the transfers that were necessary to implement the deal, and that there had been operational calls, my understanding was to sort of discuss the plumbing and how you accomplish that.

**Q. So Mr. Thompson was simply telling you that they would issue a cease to act after clearing all the pipelines, all the uncleared trades after the closing?**

A. Yeah, I didn't think -- I did not understand him to be saying -- well, I'm going to add some clarification to this. There was a  
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point at which we were not, we did not have a meeting of the minds with DTC about what, in addition to 250, Barclays might make available, and DTC, DTCC was not, had not yet agreed to accept only the 250 million, so you had two parties who were -- who lacked a meeting of the minds.

In that context, Larry Thompson may well have said basically, you know, if we don't get what we want, we are just going to cease to act and you are going to have to figure things out for yourself. That was some of the need to deal with that issue, so we could close expeditiously and not have to create some kind of a work-around, was precisely why we continued the negotiations until DTCC would be willing to process the transactions that were in the pipeline and transactions that are associated with this deal.

**Q. Was that comment by Mr. Thompson about what they would do if they didn't get what they wanted, was that in response to hearing from Barclays that Barclays was not accepting transfer of the accounts?**

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A. Again, you have got to focus on the time. I think at some point it was made clear that not having the credit support meant that after the cease to act, when a meeting of the -- when DTCC agreed that on the understanding that it was going to get the 250 million in credit support but no more, the fact that they would have to cease to act was never presented by him as, you know, something that would have precluded the very reason that we were having the negotiations, in order to enable the transaction to close by processing and making the transfers.

**Q. Let me try --**

A. You couldn't accept a transfer of customer accounts and get that business if the accounts couldn't be -- and the assets in them couldn't be transferred by DTCC. Everybody realized that they had to agree to do that and not shut the pipes down.

**Q. Yeah, I'm not interested in what would or could have happened. I want to get the sequence of your recollection down right.**

**I understand that on Sunday night at**  
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some point, Archie Cox described to DTCC Barclays' reluctance to assume the accounts and made plain that Barclays was not accepting the transfer of the accounts of DTCC?

A. Yes.

**Q. That's correct?**

Now, what was -- in response to that, did Mr. Thompson say in words or substance if DTCC can't get happy, it will issue a cease to act?

A. I don't recall it being specifically in response to the -- you know, the articulation of the final position or whether it occurred in the course of earlier assertions of the position. But it was clear in their minds that if they didn't have a -- if they did not have adequate credit support or a viable creditworthy clearing member, that they were not going to take the risk of just carrying the accounts open and continuing to accept positions. They would have to go through the process that they described as ceasing to act.

**Q. And they made that clear to Barclays?**

A. Yes.

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**Q. Can you tell me, what happened or what was the event that triggered the decision by Barclays that it would not accept a transfer of accounts at DTCC?**

MR. MORAG: I caution you from disclosing any privileged communications.

A. Can I consult on the privilege question?

**Q. Sure.**

(Recess)

**Q. Would you like the question, sir? Can you tell me what happened or what was the event that triggered the decision by Barclays that it would not accept a transfer of accounts at DTCC?**

A. After the report from the operations team, of the operations team to their principal, their principals, Archie Cox, the decision was made that they would not -- they would not accept the possibility of liabilities in excess of 250 million dollars, and they confirmed to DTCC that they were firm on their position they weren't going to accept the accounts.

**Q. When was the report of the operations team received?**

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<p>1                   <b>ROSEN</b></p> <p>2           A. Other than that it was earlier in the</p> <p>3 evening on Sunday, but possibly late, I don't</p> <p>4 have a specific recollection.</p> <p>5           <b>Q. Do you have any sense of the timing as</b></p> <p>6 <b>to when a decision was made by Barclays that it</b></p> <p>7 <b>would not accept any liabilities beyond the 250</b></p> <p>8 <b>million?</b></p> <p>9           A. Well, I think internally they had</p> <p>10 reached that position -- we were trying in good</p> <p>11 faith to see whether they could get enough</p> <p>12 information to make them comfortable, but it was</p> <p>13 finally communicated that they were firm on the</p> <p>14 250 and not accepting the accounts, maybe like</p> <p>15 11 o'clock, something like -- it was quite late</p> <p>16 on Sunday night.</p> <p>17           <b>Q. And was that Mr. Cox who conveyed that</b></p> <p>18 <b>to DTCC?</b></p> <p>19           A. I believe so, I believe so.</p> <p>20           <b>Q. Was Larry Thompson on the call in</b></p> <p>21 <b>which --</b></p> <p>22           A. I believe so.</p> <p>23           <b>Q. He was?</b></p> <p>24           A. I believe so.</p> <p>25           <b>Q. Did Mr. Thompson make a reference to</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2 <b>issuing a cease to act on that call?</b></p> <p>3           A. I don't recall him specifically making</p> <p>4 a reference at that time in response to it. But</p> <p>5 to be clear, the understanding was that the</p> <p>6 cease to act was not in respect of the</p> <p>7 processing of any of the transactions that --</p> <p>8 any of the -- processing any of the transfers</p> <p>9 that were part of the transaction.</p> <p>10           <b>Q. Now, when did you have the call with</b></p> <p>11 <b>Shari Leventhal?</b></p> <p>12           A. Earlier in the evening. Whether it</p> <p>13 was at 5 o'clock or 8 o'clock or 9 o'clock, I</p> <p>14 don't honestly recall.</p> <p>15           <b>Q. Did you have any follow-up call with</b></p> <p>16 <b>her?</b></p> <p>17           A. I don't recall that I had a follow-on,</p> <p>18 one-on-one call with Shari. It's possible that</p> <p>19 I did, but they were on the open line which was</p> <p>20 established for the purpose of reporting to all</p> <p>21 people who needed to know simultaneously,</p> <p>22 because we were under a very tight time frame,</p> <p>23 sort of what was open and what was being agreed.</p> <p>24           There was an open line with the Fed</p> <p>25 and the SEC and other interested parties, and I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2 believe that at least at some point, she was on</p> <p>3 to hear the results of the negotiations. She</p> <p>4 may have gotten information from DTCC, I just</p> <p>5 don't recall specifically.</p> <p>6           <b>Q. Can you tell me what else you recall</b></p> <p>7 <b>Larry Thompson saying in the various</b></p> <p>8 <b>conversations on Sunday night?</b></p> <p>9           A. For the most part, I recall him</p> <p>10 justifying their need for collateral in excess</p> <p>11 of the 250 million dollars. That was the point</p> <p>12 at which they were willing to go forward on that</p> <p>13 basis.</p> <p>14           <b>Q. How did he justify that?</b></p> <p>15           A. That they were -- his team, you know,</p> <p>16 were concerned about the risks.</p> <p>17           <b>Q. Do you recall anything specifically</b></p> <p>18 <b>said about the risks?</b></p> <p>19           A. Mostly my recollection is, you know,</p> <p>20 there is uncertainty, there is a lot in there to</p> <p>21 do, it would take time, we can't know exactly</p> <p>22 what the results of the liquidations will be. I</p> <p>23 mean they are a clearinghouse, they are a</p> <p>24 conservative organization, and they viewed the</p> <p>25 risk conservatively.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           <b>Q. Do you recall him saying anything</b></p> <p>3 <b>further about a cease to act other than what you</b></p> <p>4 <b>have told us?</b></p> <p>5           A. Nothing beyond what I told you.</p> <p>6           <b>Q. Do you recall saying, addressing</b></p> <p>7 <b>specifically the subject of whether the -- of</b></p> <p>8 <b>when the cease to act would take effect and the</b></p> <p>9 <b>impact that it would have on the transaction or</b></p> <p>10 <b>on the unsettled trades that were at DTCC?</b></p> <p>11           MR. MORAG: Objection, asked and</p> <p>12 answered.</p> <p>13           A. He never suggested that there would be</p> <p>14 any impact as the transaction was resolved. The</p> <p>15 purpose of the resolution was that there would</p> <p>16 be no impact.</p> <p>17           <b>Q. Did he ever address whether the cease</b></p> <p>18 <b>to act would have an impact on outstanding</b></p> <p>19 <b>unsettled trades?</b></p> <p>20           A. Mostly what I recall him focusing on</p> <p>21 was they don't like to cease to act because it</p> <p>22 means that other participants in the marketplace</p> <p>23 aren't going to receive the benefit of the</p> <p>24 processing that they would otherwise do when</p> <p>25 those transactions came in, and hadn't had to do</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 it in the past.</p> <p>3 My impression was that they were more</p> <p>4 concerned about the public relations</p> <p>5 implications of a clearing corporation doing</p> <p>6 that than they were focused on any impact on us,</p> <p>7 because it was a mutual premise that the purpose</p> <p>8 of this was to enable us to close and process</p> <p>9 the transactions.</p> <p>10 <b>Q. Did he ever say anything to indicate</b></p> <p>11 <b>that his references to cease to act related</b></p> <p>12 <b>exclusively to a notice that would come into</b></p> <p>13 <b>effect after the closing and after all of the</b></p> <p>14 <b>unprocessed, unsettled trades of Lehman had been</b></p> <p>15 <b>cleared by DTCC?</b></p> <p>16 MR. MORAG: Object to the form.</p> <p>17 A. I think in going over the terms of the</p> <p>18 arrangements it was clear that the transactions</p> <p>19 that were the subject of the acquisition, those</p> <p>20 transfers were going to be made, and I don't</p> <p>21 think there was any implication of any kind, it</p> <p>22 would have been absurd for there to have been an</p> <p>23 implication that we reached an agreement with</p> <p>24 DTC and by the way, they were going to not</p> <p>25 process the transactions.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>Q. Let me ask you about the time period</b></p> <p>3 <b>prior to reaching a meeting of the minds with</b></p> <p>4 <b>DTCC. At any time before that, did he give any</b></p> <p>5 <b>representation or assurance to Barclays that</b></p> <p>6 <b>while DTCC might issue a cease to act, it would</b></p> <p>7 <b>not affect the transaction, and that they would</b></p> <p>8 <b>honor and process all unsettled trades? Did he</b></p> <p>9 <b>say that in words or substance?</b></p> <p>10 A. I am sorry, can you repeat that.</p> <p>11 <b>Q. Yes. At any time prior to the meeting</b></p> <p>12 <b>of the minds between Barclays and DTCC, did</b></p> <p>13 <b>Larry Thompson in words or substance say, we may</b></p> <p>14 <b>have to issue a cease to act, but it will not</b></p> <p>15 <b>affect the transaction, and notwithstanding our</b></p> <p>16 <b>cease to act, we will make sure that it takes</b></p> <p>17 <b>effect only after all unsettled trades have been</b></p> <p>18 <b>cleared?</b></p> <p>19 A. No. I think that if the -- if we</p> <p>20 hadn't reached an agreement with DTCC, then we</p> <p>21 had, we had the prospect of having to figure out</p> <p>22 another way of consummating the transaction if</p> <p>23 they were not going to process trades, and</p> <p>24 basically what DTCC was saying was that if they</p> <p>25 were going to continue to process trades and act</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 for these accounts, then they wanted more credit</p> <p>3 support than they would have if they were left</p> <p>4 to look only to the assets of LBI.</p> <p>5 <b>Q. Is there anything further you recall</b></p> <p>6 <b>Larry Thompson saying on the Sunday night other</b></p> <p>7 <b>than what you have told us?</b></p> <p>8 A. I'm sure there is a lot more that</p> <p>9 could be said. I just don't have a specific</p> <p>10 recollection of that.</p> <p>11 <b>Q. And all my questions are just to your</b></p> <p>12 <b>recollection.</b></p> <p>13 <b>What about Mr. Montal? Do you recall</b></p> <p>14 <b>anything that Mr. Montal said in any of the</b></p> <p>15 <b>conversations on Sunday night or early Monday</b></p> <p>16 <b>morning?</b></p> <p>17 A. He was not a prominent speaker, at</p> <p>18 least while I was in the room.</p> <p>19 <b>Q. Anything that you recall?</b></p> <p>20 A. I don't have a specific recollection</p> <p>21 of what he might have said.</p> <p>22 <b>Q. What about Shelly Hirshon?</b></p> <p>23 A. I don't remember Shelly Hirshon</p> <p>24 speaking of it.</p> <p>25 <b>Q. You did tell us about Don Donahue</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>making a call to you. Anything else that you</b></p> <p>3 <b>recall hearing from Dan Donahue on the Sunday</b></p> <p>4 <b>night?</b></p> <p>5 A. No. No more than that conversation.</p> <p>6 <b>Q. I have been asking you now about the</b></p> <p>7 <b>conversations with DTC for some time limited to</b></p> <p>8 <b>the Sunday night, and I know that there were</b></p> <p>9 <b>conversations that may have spilled over into</b></p> <p>10 <b>the wee hours of early morning. So if we</b></p> <p>11 <b>include Monday morning, are there any</b></p> <p>12 <b>conversations by any of the participants that</b></p> <p>13 <b>you recall that you haven't told us about?</b></p> <p>14 A. I have a vague recollection that there</p> <p>15 may have been continuing discussions on the</p> <p>16 operations side in anticipation of the closing</p> <p>17 of the transaction, and the balance of the</p> <p>18 exchanges were between the lawyers trying to</p> <p>19 reflect what had been agreed in I think what's</p> <p>20 become or been referred to as the DTCC letter.</p> <p>21 <b>Q. And anything else, if you recall?</b></p> <p>22 A. Not that I specifically recall,</p> <p>23 sitting here.</p> <p>24 <b>Q. We will mark as Exhibit 625 a document</b></p> <p>25 <b>Bates stamped DTCC 00359 through 361.</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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(Exhibit 625, document Bates stamped DTCC 00359 through 361 marked for identification, as of this date.)

A. I recall this.

**Q. If you look at the e-mail at the top, the first page, sir. Can you tell me what you meant when you said, "The obligations and entitlements in relation to the funds run between DTC and the LBI estate, not between Barclays and DTC"?**

A. Because the credit support was going to be limited to the 250 million dollar cash payment, we thought that since we could direct that payment, I thought that since it was possible to direct that payment on Lehman's behalf, so that the DTC got hold of it, it was -- as far as the transaction was concerned, that was an asset of -- that would otherwise have been an asset of the estate that was being made available to provide credit support, and since it would otherwise have been an asset, that the arrangements relating to that were between Lehman and DTC and didn't need to be between Barclays.

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So my feeling was that to keep things simple, we didn't really need to have a separate agreement.

**Q. Let me show you a document that's previously been marked as Exhibit 606.**

**While we are waiting for that, sir, how did the impasse between Barclays and DTC get resolved? How did the parties reach a meeting of the minds?**

A. There were conversations staking out positions. The parties would go off. There was due diligence being done on both sides, because both sides wanted to know what the risks were, and they would get back on the telephone, and at some point, DTC decided that the position that had been articulated by Barclays was acceptable to it.

**Q. So DTC had previously refused to accept Barclays' position of limiting the recourse to 250 million, but it changed its mind at some point on the Sunday or early Monday?**

A. Until late on Sunday night, DTC had not signaled its agreement to go forward based on the 250 million dollars.

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**Q. How did DTCC signal its agreement?**

A. On a conference call, it -- Larry Thompson said, we are willing to go forward on this basis.

**Q. And what was the specific thing he said with respect to the basis?**

A. That Barclays would not be assuming the accounts and that the credit support that would be made available would be limited to the 250 million dollar holdback on the purchase, on the 250 million dollars.

**Q. Is that something that you recall Larry Thompson specifically saying?**

A. I could be wrong, but that's my recollection. My recollection is that Larry was largely the spokesperson for DTC.

**Q. And did Larry explain what prompted DTCC to change its position?**

A. No. I don't recall -- I don't recall having an explanation from him.

**Q. Did you have any understanding as to what prompted DTCC to change its position?**

A. I assume that -- all I can say is that I assumed with more time, they got a better

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understanding of what the assets and the risks were, and assumed that they decided that would be acceptable for them, to take the liquidation risk with the assets that they had in the 250 million.

But he didn't give us a quantitative -- he didn't share his quantitative analysis of their evaluation of that risk, nor did we expect them to.

**Q. When did this meeting of the minds conversation happen?**

A. It was very late on Sunday night. Sometime before midnight, I think.

**Q. Do you know whether it was before midnight or after midnight?**

A. I would have to refresh my recollection.

**Q. How would you do that?**

A. I would look at the e-mail traffic.

**Q. Anything else?**

A. I think that is all that I would have available to me today to help.

**Q. I show you a document previously marked as Exhibit 606. Sir, you received this**

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<p>1 ROSEN</p> <p>2 e-mail?</p> <p>3 A. Yes.</p> <p>4 Q. Does it -- do you see the reference to</p> <p>5 "earlier this evening," the first line? Does</p> <p>6 that refresh your recollection as to -- the</p> <p>7 first line of the e-mail, cover e-mail, does</p> <p>8 that refresh your recollection as to when the</p> <p>9 agreement was reached?</p> <p>10 A. Well, I know it was before 3:43 a.m.</p> <p>11 How much before -- I remember we felt that we</p> <p>12 tended to wait a long time to get drafts back</p> <p>13 from the other side, but I don't recall.</p> <p>14 Q. Who prepared this draft?</p> <p>15 A. This was -- it appears to have been</p> <p>16 prepared by DTC or its counsel, but I don't know</p> <p>17 specifically.</p> <p>18 Q. Did you have any discussions with DTCC</p> <p>19 or its counsel anytime after receiving this</p> <p>20 e-mail?</p> <p>21 A. Most of the direct negotiations</p> <p>22 regarding this were conducted by my partner Mike</p> <p>23 Mazzuchi. I did exchange e-mails including, I</p> <p>24 guess it was slightly earlier in the evening,</p> <p>25 with Sheldon Hirshon. There may have been later</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 e-mails exchanges, I don't recall.</p> <p>3 Q. Leaving aside e-mails, do you know</p> <p>4 whether Mike Mazzuchi had discussions with</p> <p>5 anyone at DTCC after circulating or the</p> <p>6 circulation of this draft that has been marked</p> <p>7 as Exhibit 606?</p> <p>8 A. Well, with their counsel, certainly.</p> <p>9 I don't recall whether or not he was, he had</p> <p>10 conversations that included individuals from</p> <p>11 DTCC.</p> <p>12 Q. Do you know what conversations he had</p> <p>13 with their counsel?</p> <p>14 A. Other than to discuss changes to this</p> <p>15 document prior to its finalization, I don't.</p> <p>16 Q. And do you know whether there were in</p> <p>17 fact discussions as opposed to e-mail exchanges?</p> <p>18 A. I don't -- I think it was principally</p> <p>19 exchanges of drafts. It was very late and</p> <p>20 people were very tired.</p> <p>21 Q. If you turn to paragraph 1, sir, the</p> <p>22 winding down of accounts. Did you review this</p> <p>23 at the time?</p> <p>24 A. I don't recall specifically whether I</p> <p>25 looked at this draft or a subsequent draft.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 Q. Did you understand that, at the time</p> <p>3 this draft was received, that there was an</p> <p>4 agreement, a meeting of the minds between</p> <p>5 Barclays and DTC whereby all of the assets in</p> <p>6 the Lehman accounts at DTC were going to go to</p> <p>7 Barclays and the accounts themselves were going</p> <p>8 to stay at DTCC?</p> <p>9 MR. MORAG: Object to the form.</p> <p>10 A. Could you repeat the question.</p> <p>11 Q. Did you have an understanding at the</p> <p>12 time you received this e-mail that there had --</p> <p>13 there was an agreement, a meeting of the minds</p> <p>14 between Barclays and DTCC?</p> <p>15 MR. MORAG: That's the only question?</p> <p>16 MR. MAGUIRE: Yes.</p> <p>17 A. Yes.</p> <p>18 Q. And did you understand that that</p> <p>19 agreement involved the accounts, the Lehman</p> <p>20 accounts staying at Lehman and at DTC?</p> <p>21 A. Yes.</p> <p>22 Q. Did you understand what was happening</p> <p>23 to the assets in those accounts?</p> <p>24 A. Insofar as Barclays was concerned, our</p> <p>25 understanding was that the assets, whether they</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 were proprietary assets or customer assets that</p> <p>3 under the deal terms were to be transferred,</p> <p>4 would be processed.</p> <p>5 Q. And once those transactions were all</p> <p>6 processed, who owned the assets in the Lehman</p> <p>7 accounts at DTCC?</p> <p>8 A. The residual assets that were not to</p> <p>9 be -- whatever we didn't -- whatever Barclays</p> <p>10 didn't buy or acquire was part of the Lehman</p> <p>11 estate.</p> <p>12 Q. Did you have an understanding as to</p> <p>13 whether Barclays was acquiring any of the assets</p> <p>14 at the -- in the DTCC clearance boxes?</p> <p>15 A. Yes. Yes, my understanding is that</p> <p>16 they were acquiring those assets.</p> <p>17 Q. And so that at the closing, those</p> <p>18 assets would then belong to Barclays?</p> <p>19 A. Contractually, yes, at the closing</p> <p>20 there would have been an agreement to transfer</p> <p>21 them to Barclays, an understanding that those</p> <p>22 transactions would be processed by DTCC and not</p> <p>23 be subject to a cease to act.</p> <p>24 Q. And was that explained to the DTCC,</p> <p>25 that the assets in the Lehman accounts would</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2 <b>contractually belong to Barclays at closing?</b></p> <p>3       A. The DTCC was provided at their request</p> <p>4 a draft of the agreement that reflected the --</p> <p>5 what do you call it? -- that reflected the</p> <p>6 agreements to transfer the clearance box assets</p> <p>7 as part of the deal.</p> <p>8       <b>Q. A draft of the clarification letter?</b></p> <p>9       A. A draft of the letter, right.</p> <p>10       <b>Q. Other than providing the DTCC with a</b></p> <p>11 <b>draft of the clarification letter, did anyone on</b></p> <p>12 <b>the Barclays side explain to DTCC that the</b></p> <p>13 <b>assets --</b></p> <p>14       A. I believe that that was the subject of</p> <p>15 discussions on an operational level, because</p> <p>16 they wanted to impose a cease to act at some</p> <p>17 point, and they had to figure out a way to</p> <p>18 effect the transfers and do whatever else that</p> <p>19 they wanted to do under their rules.</p> <p>20       <b>Q. Did you participate in any of the</b></p> <p>21 <b>operations conversations in which anyone from</b></p> <p>22 <b>the Barclays side explained to anyone on the</b></p> <p>23 <b>DTCC side that all of the assets at, in the</b></p> <p>24 <b>Lehman accounts at DTCC were being acquired by</b></p> <p>25 <b>Barclays?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2       A. No, I don't think that I said that all</p> <p>3 of the assets in those accounts were being</p> <p>4 acquired. There are some assets that were being</p> <p>5 acquired, some assets that were not being</p> <p>6 acquired. There were customer accounts that</p> <p>7 were being transferred and presumably other</p> <p>8 customer accounts that were not part of the</p> <p>9 deal. I mean customer securities.</p> <p>10       That was dealt with in the</p> <p>11 clarification letter. What Lehman was and was</p> <p>12 not selling to Barclays was not the subject of</p> <p>13 the DTCC letter. The DTCC letter from the</p> <p>14 beginning was about financial responsibilities</p> <p>15 to DTCC for the liabilities associated with</p> <p>16 those accounts.</p> <p>17       <b>Q. And did anyone explain to DTCC that</b></p> <p>18 <b>Barclays understood there to be a distinction</b></p> <p>19 <b>between the accounts and the assets in the</b></p> <p>20 <b>accounts?</b></p> <p>21       A. It would have been an absurd</p> <p>22 conversation to have with a clearing</p> <p>23 corporation, because a clearing corporation is</p> <p>24 basically structured fundamentally on the</p> <p>25 premise that there is a difference between legal</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2 ownership and responsibility for accounts and</p> <p>3 beneficial ownership and entitlement to the</p> <p>4 assets in the accounts.</p> <p>5       Without that distinction, every person</p> <p>6 who owns a security in the United States in</p> <p>7 order to own it would have to be a clearing</p> <p>8 member of a clearing corporation, which is not</p> <p>9 how we would realize our financial markets.</p> <p>10       <b>Q. You are not aware of any conversation</b></p> <p>11 <b>between anyone at Barclays, working for</b></p> <p>12 <b>Barclays, and anyone at DTCC concerning any</b></p> <p>13 <b>distinction between the Lehman accounts and the</b></p> <p>14 <b>assets in the Lehman accounts at DTCC?</b></p> <p>15       MR. HUME: Objection, asked and</p> <p>16 answered.</p> <p>17       A. I don't have anything to add.</p> <p>18       <b>Q. Did it come to your attention that</b></p> <p>19 <b>DTCC was of the understanding that the assets in</b></p> <p>20 <b>the Lehman account were remaining with the</b></p> <p>21 <b>estate?</b></p> <p>22       A. It is impossible for me to understand</p> <p>23 how they could have formed that view or that</p> <p>24 they -- and I am unaware that they did form that</p> <p>25 view.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2       <b>Q. If you look, sir, at paragraph 1 of</b></p> <p>3 <b>the draft before you marked as Exhibit 606, you</b></p> <p>4 <b>will see the second part of that section 1, same</b></p> <p>5 <b>paragraph really of that section 1, says, "As</b></p> <p>6 <b>part of this closeout process, the trustee</b></p> <p>7 <b>hereby authorizes DTC to accept and act upon</b></p> <p>8 <b>instructions from NSCC to deliver securities</b></p> <p>9 <b>from the DTC LBI account to NSCC's account," and</b></p> <p>10 <b>it goes on. Do you see that sentence?</b></p> <p>11       A. I do.</p> <p>12       <b>Q. Can you explain why the parties were</b></p> <p>13 <b>providing for the trustee to exercise authority</b></p> <p>14 <b>over assets in the Lehman account if those</b></p> <p>15 <b>assets contractually were understood all along</b></p> <p>16 <b>to belong to Barclays?</b></p> <p>17       MR. MORAG: Objection,</p> <p>18 mischaracterizes his testimony. For the</p> <p>19 third time.</p> <p>20       A. And I think you're asking me to</p> <p>21 interpret what the import of this is, because I</p> <p>22 don't accept your characterization of what this</p> <p>23 does or -- what this provision does or says.</p> <p>24       <b>Q. So you would --</b></p> <p>25       A. I think I would decline to answer on</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

the grounds that I think my interpretation of this provision would be privileged.

**Q. At the time that this draft was received, did you understand that Barclays was taking -- was cherry picking or at least taking certain assets from the clearance box and not other assets, or at least that it had that option?**

MR. MORAG: Objection, compound.

A. Why don't you ask the first question.

**Q. Sure. What I am trying to understand is, at the time that this draft is circulated, what is your understanding of the business deal between Barclays and the estate?**

A. I was not -- I was not aware -- I don't know it to be the case, sitting here today, that there were clearance box assets that Barclays had decided they didn't want.

**Q. Did you understand that Barclays had the ability to either return or not take certain clearance box assets?**

A. I'm not sure at that time that I had focused on the language that you showed me earlier today.

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**Q. Did you raise any question with DTCC or anyone else as to why there was not any mechanism here for separating out the assets that were being taken by Barclays and the assets that Barclays did not choose to take from the DTC clearance boxes?**

A. No, because at that point, I was under the impression that Barclays was taking all of the clearance box assets, which it was their ability to do or not do, as they decided at any time. I think there was a lack of -- I don't know how clearly it was understood what all of those assets were.

**Q. I'll show you next a document that has been marked as Exhibit 607.**

MR. HUME: How much more do you have?

And would it make sense to take a break at some point afternoon then finish?

MR. MAGUIRE: I can finish this in five minutes and that might be a better time to take a break.

**Q. This is an e-mail that your colleague, Mr. Mazzuchi circulated?**

A. Um-hm.

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ROSEN

**Q. I note in this draft and the prior draft, there is a signature line for James B. Giddens as trustee for the liquidation of Lehman Brothers. And the signature line is for James B. Kobak, Jr. Do you see that?**

A. Um-hm.

**Q. Did you have any discussions with Mr. Kobak concerning this agreement?**

A. I did not have a verbal conversation with James Kobak about this agreement, but he was provided the various drafts that were exchanged.

**Q. And made comments?**

A. As far as I'm aware, yes.

**Q. You see Mr. Mazzuchi's cover e-mail says, "Further to Ed Rosen's discussion with Sheldon, attached is a revised draft of the recourse arrangement for the 250 million dollar purchase price. This also reflects comments from Lehman."**

**Did you understand that to be a reference to comments from the trustee's representatives?**

A. I don't know.

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**Q. Do you know whether this agreement was discussed with anyone from Weil Gotshal?**

**WITNESS' ATTORNEY: Are you referring to the DTC letter in general or this draft in particular?**

**Q. The DTC letter in general.**

A. I do not recall.

**Q. Do you know whether Weil was provided with any draft of the DTC letter agreement?**

A. Yes, it would have been on the closing table and it may have been provided separately by Shelly Hirshorn.

**Q. Other than it being on the closing table and whether Mr. Hirshorn did or did not provide it, do you though whether anyone otherwise provided either the final agreement or a draft of the DTC later agreement to anyone at Weil?**

A. I don't have a recollection. They may well have been in the room. The rooms weren't closed off. They may have participated in reviewing the exchanges of draft. I just don't have a specific recollection. Again, at this time, I was in and out of the documentation,

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1 ROSEN  
2 also working on other problems.  
3 **Q. In which room was the DTC letter**  
4 **agreement put together -- speaking now to Cleary**  
5 **and the Barclays representatives -- which room**  
6 **at Weil were you working in?**  
7 **WITNESS' ATTORNEY: Objection,**  
8 **compound. It is two different questions.**  
9 A. Yeah, I don't know how to describe,  
10 there was a room on a floor and I was not  
11 located in a particular room. I jockeyed  
12 between several rooms.  
13 **Q. Where was the, speaking specifically**  
14 **now to the DTCC negotiations, telephone calls**  
15 **and the drafting, in which room did that happen?**  
16 A. That happened in a room on a different  
17 floor.  
18 **Q. Do you know what floor?**  
19 A. I believe it was the floor below the  
20 floor where the other meetings were taking  
21 place.  
22 **Q. Were there any other Lehman-related**  
23 **conference rooms in use on that lower floor?**  
24 A. I don't, I don't recall.  
25 **Q. Did anyone from Cleary instruct anyone**  
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1 ROSEN  
2 **previously marked as Exhibit 563C. Have you**  
3 **ever seen that letter before?**  
4 A. Again, yes, without verifying how  
5 closely it tracks the actual agreement.  
6 **Q. If you turn, sir, to page 4, there is**  
7 **a sentence beginning at the first full paragraph**  
8 **that starts, "By Sunday night, September 21."**  
9 **Do you see that sentence?**  
10 A. Um-hm, yes.  
11 **Q. I give that to you as background. My**  
12 **question is whether on any of the Sunday night**  
13 **or Monday morning conversations anyone from DTCC**  
14 **said in words, substance that they believed that**  
15 **DTCC's exposure to Lehman from processing the**  
16 **remaining transactions was substantially less**  
17 **than it originally feared?**  
18 A. I think implicitly by them saying they  
19 had become comfortable with the internal review  
20 that they were doing, they would be willing to  
21 close the transaction with 250 million.  
22 **Q. So the fact that there was a meeting**  
23 **of the minds suggests that DTCC had become more**  
24 **comfortable with its exposure?**  
25 A. They may have said that we have  
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1 ROSEN  
2 **from Weil that they were not permitted into that**  
3 **room?**  
4 A. No, not that I am aware.  
5 **Q. Have you -- at the beginning of**  
6 **Mr. Mazzuchi's e-mail, he says, "Further to Ed**  
7 **Rosen's discussion with Sheldon," do you know**  
8 **what that discussion refers to?**  
9 A. I think it refers to the same issue  
10 that's reflected in the earlier exchange of  
11 e-mail in which we were taking the view that  
12 this was a limited recourse form of credit  
13 support and not a guarantee of Barclays. This  
14 was an asset that would otherwise have been paid  
15 to the estate as part of the transaction that  
16 was being made available to secure additional  
17 credit support to DTCC and its related  
18 affiliates, and I thought that describing it as  
19 a guarantee by Barclays was not entirely  
20 accurate.  
21 **Q. OK.**  
22 MR. MAGUIRE: This is probably a good  
23 time to take a break.  
24 (Recess)  
25 **Q. I will show you a document we have**  
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1 ROSEN  
2 continued to review this and we have gotten to  
3 that point based on the review. I don't recall  
4 specifically.  
5 **Q. Do you have any recollection of that?**  
6 MR. HUME: Objection, asked and  
7 answered.  
8 **Q. The reason I ask is because you say**  
9 **specifically?**  
10 A. I have an impression that that was  
11 what was conveyed, that they had gotten  
12 comfortable with the risk. But I don't have a  
13 specific recollection of a specific articulation  
14 from the calls.  
15 **Q. I'll show you a document that has**  
16 **previously been marked as Exhibit 156B. It is**  
17 **actually not entirely clear, but it is a letter**  
18 **from Cleary Gottlieb dated March 6, 2009. Do**  
19 **you know whether you have ever seen that letter**  
20 **before, sir?**  
21 A. I may have seen a draft of this  
22 letter. I don't have a specific recollection.  
23 **Q. My only questions, sir, are with**  
24 **respect to page 3 of this letter, the second**  
25 **full sentence on page 3, starts, "Nothing in**  
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<p>1                   <b>ROSEN</b></p> <p>2 <b>this letter or in Exhibit B should be construed</b></p> <p>3 <b>to suggest."</b></p> <p>4       <b>Do you see that?</b></p> <p>5       A. Yes.</p> <p>6       <b>Q. Do you have an understanding, sir, as</b></p> <p>7 <b>to what that sentence means, of Mr. Kobak's</b></p> <p>8 <b>letter?</b></p> <p>9       A. To be honest with you, I would have to</p> <p>10 look at -- I would have to read the entire</p> <p>11 letter in order to put that sentence in context.</p> <p>12       WITNESS' ATTORNEY: Maybe we could</p> <p>13 discuss this off the record and I could</p> <p>14 explain it to you.</p> <p>15       <b>Q. Sure, that would be helpful. Let me</b></p> <p>16 <b>just ask you then if you have an understanding</b></p> <p>17 <b>that the securities in the Lehman -- that</b></p> <p>18 <b>Barclays acquired the securities in the Lehman</b></p> <p>19 <b>clearance boxes at the time of closing</b></p> <p>20 <b>regardless of whether any customers had long</b></p> <p>21 <b>positions in those securities?</b></p> <p>22       MR. HUME: I think you're asking the</p> <p>23 witness to interpret the contract when you</p> <p>24 ask that question. If you want to ask him a</p> <p>25 factual question about a discussion, that's</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2 fine, but to interpret precisely which</p> <p>3 securities are covered by the clearance box</p> <p>4 provision of the clarification letter just</p> <p>5 seems like you're asking him a legal</p> <p>6 interpretation question.</p> <p>7       <b>Q. You can answer.</b></p> <p>8       MR. HUME: Well, you can't answer to</p> <p>9 the extent it would reveal attorney work</p> <p>10 product analysis that we have done and I</p> <p>11 think beyond that --</p> <p>12       A. I think answering the question would</p> <p>13 call for me to interpret the contractual</p> <p>14 documents.</p> <p>15       <b>Q. Let me leave aside the contractual</b></p> <p>16 <b>documents. Just as a matter of the business</b></p> <p>17 <b>deal that was negotiated, did you understand the</b></p> <p>18 <b>business agreement between the parties was that</b></p> <p>19 <b>Barclays was getting the assets in the clearance</b></p> <p>20 <b>boxes that were not owned by customers or did</b></p> <p>21 <b>you understand that Barclays was getting the</b></p> <p>22 <b>assets in the clearance boxes notwithstanding</b></p> <p>23 <b>whether any customer had had a long position?</b></p> <p>24       A. My understanding was that they were</p> <p>25 getting what was in the clearance boxes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2       <b>Q. And that's regardless of what</b></p> <p>3 <b>customers had long positions in those</b></p> <p>4 <b>securities?</b></p> <p>5       A. It is based on there being lien-free</p> <p>6 securities.</p> <p>7       <b>Q. So the fact that customers had long</b></p> <p>8 <b>positions did not affect Barclays' rights?</b></p> <p>9       A. I think you're asking me to interpret</p> <p>10 the implications of those provisions in the</p> <p>11 clearance box, relating to the clearance box.</p> <p>12       <b>Q. I'm just asking you to tell me what</b></p> <p>13 <b>you just told me?</b></p> <p>14       A. You're asking me to interpret whether</p> <p>15 the reference to the clearance box, the extent</p> <p>16 to which it covered certain kinds of assets and</p> <p>17 that's asking me to interpret a term of the</p> <p>18 agreement.</p> <p>19       <b>Q. Leaving aside the agreement, just the</b></p> <p>20 <b>business deal, just the business deal between</b></p> <p>21 <b>the parties, did you understand --</b></p> <p>22       A. The business deal, as far as I was</p> <p>23 aware, did not include a limitation on the</p> <p>24 clearance box assets that Barclays was getting</p> <p>25 as far as I recall.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2       MR. MAGUIRE: We will mark as Exhibit</p> <p>3 626 a document Bates stamped BCI-CG 0024097</p> <p>4 through 99.</p> <p>5       (Exhibit 626, document Bates stamped</p> <p>6 BCI-CG 00024097 through 99 marked for</p> <p>7 identification, as of this date.)</p> <p>8       <b>Q. Had you received this e-mail chain</b></p> <p>9 <b>from Mr. McDaniel, sir?</b></p> <p>10       A. I did.</p> <p>11       <b>Q. And you had learned at some point that</b></p> <p>12 <b>there was 1 billion dollars in cash margin at</b></p> <p>13 <b>the OCC?</b></p> <p>14       A. Could you repeat your question.</p> <p>15       <b>Q. Yes, you learned at some point there</b></p> <p>16 <b>was 1 billion dollars in cash that the OCC was</b></p> <p>17 <b>holding for the accounts of LBI?</b></p> <p>18       A. That is in here, yes.</p> <p>19       <b>Q. And that was in addition to government</b></p> <p>20 <b>securities that were being held at JP Morgan</b></p> <p>21 <b>Chase?</b></p> <p>22       A. It presumably is additional to any</p> <p>23 other collateral that would have been noncash.</p> <p>24       <b>Q. And you asked Jim for more information</b></p> <p>25 <b>about the 1 billion dollars?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2           <b>WITNESS' ATTORNEY: Object to the</b></p> <p>3           <b>characterization.</b></p> <p>4           <b>Q. Specifically, you asked him whether it</b></p> <p>5           <b>was excess margin?</b></p> <p>6           A. Yeah.</p> <p>7           <b>Q. Tell me why you asked that question.</b></p> <p>8           A. Yes. Barclays was -- by agreeing to</p> <p>9           step into Lehman's shoes under the TAA, it was</p> <p>10           stepping into the responsibility to perform all</p> <p>11           of the obligations for all positions that were</p> <p>12           in the account up until the day at some point in</p> <p>13           the future when the positions in the account</p> <p>14           were ultimately liquidated and there was no</p> <p>15           further exposure.</p> <p>16           One of the things that I was trying to</p> <p>17           ascertain was whether or not, if Barclays</p> <p>18           stepped into the -- into Lehman's shoes, whether</p> <p>19           in addition to the ongoing liabilities that it</p> <p>20           was going to assume while the positions in those</p> <p>21           accounts were outstanding, it was stepping into</p> <p>22           a day one liability, and in addition, the extent</p> <p>23           to which there was what would have been from</p> <p>24           OCC's perspective an excess requirement which is</p> <p>25           not necessarily obviously the same as whether</p> <p>                  TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           there is an excess from the clearing brokers'</p> <p>3           requirement.</p> <p>4           There are very few, if any, clearing</p> <p>5           brokers who limit the amount of margin that they</p> <p>6           collect across their customer base to the amount</p> <p>7           that's required at the clearing house,</p> <p>8           particularly in the case of less creditworthy</p> <p>9           customers. So this was part of an endeavor to</p> <p>10           get our arms around how much potential liability</p> <p>11           Barclays might be stepping into in taking on</p> <p>12           these accounts.</p> <p>13           <b>Q. And what did you learn?</b></p> <p>14           A. Not a lot. Not as much as we would</p> <p>15           have liked to have learned. What we learned was</p> <p>16           that over the weekend, I received an e-mail that</p> <p>17           suggested that there was -- it was an e-mail</p> <p>18           forwarded to me by Bill Navin, I'm sure it is in</p> <p>19           the record, that it looked like there were net</p> <p>20           in-flows to the clearing accounts expected on</p> <p>21           Monday at the open of business.</p> <p>22           So that suggested to me that if we</p> <p>23           closed on Monday morning, at least on Monday</p> <p>24           morning -- obviously you can't speak to Monday</p> <p>25           night or Tuesday morning -- as far as Monday</p> <p>                  TSG Reporting - Worldwide   877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2           morning when they closed, Barclays would not</p> <p>3           have to have coughed up a significant amount of</p> <p>4           additional margin to be held at OCC.</p> <p>5           I also learned though one of the</p> <p>6           things that we wanted to find out about, as I</p> <p>7           say, there are two dimensions to the risk that</p> <p>8           you assume when you do this. One dimension to</p> <p>9           the risk is the liability you assume as of the</p> <p>10           pre-existing mark to market by the clearing</p> <p>11           corporation and the other is the risk that you</p> <p>12           assume with respect to positions that are in</p> <p>13           there, particularly if they are positions of</p> <p>14           someone who is not creditworthy and may not be</p> <p>15           good for the payment.</p> <p>16           And so I asked the question whether or</p> <p>17           not there looked to be positions that could</p> <p>18           entail that kind of risk and was told yes and</p> <p>19           one position in particular that was identified</p> <p>20           was a position of an affiliate, I don't remember</p> <p>21           which affiliate of Lehman that was, a very</p> <p>22           substantial position in what was called a VIX</p> <p>23           future contract that the OCC cleared that was</p> <p>24           regarded as being so large that it would have</p> <p>25           taken a very significant amount of time to</p> <p>                  TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           liquidate it and because it was on market</p> <p>3           volatility at that point in time, it was a -- it</p> <p>4           was basically opposite the most volatile market</p> <p>5           reference and there was significant concern, for</p> <p>6           example, that it may take many million, tens of</p> <p>7           millions of dollars before that position could</p> <p>8           be liquidated.</p> <p>9           There was separately some effort that</p> <p>10           I saw in an e-mail to provide better information</p> <p>11           about sort of what the collateral was, what the</p> <p>12           positions were. But those positions were not</p> <p>13           made available in a way that would have enabled</p> <p>14           Barclays to fully sort of model and understand</p> <p>15           the respective risks.</p> <p>16           So they were not ultimately aware how</p> <p>17           much risk they were assuming by assuming</p> <p>18           financial responsibility for those. But it did</p> <p>19           appear that at least at the moment that the</p> <p>20           transaction was concluded, there wouldn't have</p> <p>21           been a shortfall that they would necessarily</p> <p>22           have to make up.</p> <p>23           But it was equally true that the</p> <p>24           hundreds of millions or billions that were going</p> <p>25           in on Monday morning could have gone out on</p> <p>                  TSG Reporting - Worldwide   877-702-9580</p>

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<p>1 ROSEN</p> <p>2 Tuesday morning because that was the volatility</p> <p>3 from just one mark to another. So there was</p> <p>4 obviously a substantial amount of risk in a</p> <p>5 market with very substantial volatility.</p> <p>6 So we tried to find out what we could,</p> <p>7 but it was a very mixed picture with a potential</p> <p>8 significant downside.</p> <p>9 <b>Q. And the risk, as you understood it,</b></p> <p>10 <b>was concentrated in what would happen after</b></p> <p>11 <b>closing as opposed to inherent in any of the</b></p> <p>12 <b>positions as of closing?</b></p> <p>13 A. It was that -- yes, let me put it</p> <p>14 differently, I would say that the amount of</p> <p>15 immediate payment obligations seemed to be</p> <p>16 known, unless the market or the facts changed in</p> <p>17 a way between the time we got that e-mail and</p> <p>18 what happened when it opened. It could</p> <p>19 conceivably have been some event in an early</p> <p>20 open in Asia that caused the markets to tank so</p> <p>21 significantly that OCC would have said, sorry,</p> <p>22 we need another mark. But it didn't -- there</p> <p>23 wasn't -- there wasn't a clear obligation to pay</p> <p>24 out money on Monday morning to the OCC.</p> <p>25 <b>Q. Did Barclays do anything to protect</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>itself against the uncreditworthy affiliate and</b></p> <p>3 <b>its VIX futures position?</b></p> <p>4 A. I think it just decided to take the</p> <p>5 risk of that with the balance of the</p> <p>6 arrangements. There was nothing it could have</p> <p>7 done in terms of Monday. The markets weren't</p> <p>8 open to close out the positions and the reason</p> <p>9 there was a significant risk was because the</p> <p>10 position couldn't have been closed out that</p> <p>11 quickly because it was apparently so large in</p> <p>12 relation to the liquidity of the market for</p> <p>13 contract.</p> <p>14 MR. MAGUIRE: We will mark as Exhibit</p> <p>15 627 a document Bates stamped CGSH 00034491</p> <p>16 through 92.</p> <p>17 (Exhibit 627, document Bates stamped</p> <p>18 CGSH 0034491 through 92 marked for</p> <p>19 identification, as of this date.)</p> <p>20 <b>Q. Is this an e-mail you received from</b></p> <p>21 <b>Bill Navin on the Sunday?</b></p> <p>22 A. Yes, yes, it is. It was on Sunday</p> <p>23 morning.</p> <p>24 <b>Q. And he provides in this the</b></p> <p>25 <b>information concerning the collects, that is the</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>amount that the OCC would pay to the clearing</b></p> <p>3 <b>member, in this case to Lehman or its successor,</b></p> <p>4 <b>Barclays, on Monday morning, right?</b></p> <p>5 A. The witness is nodding, the deponent</p> <p>6 is nodding. Yes.</p> <p>7 <b>Q. And you understand in each case, the</b></p> <p>8 <b>collect was a positive, meaning that payment</b></p> <p>9 <b>from the OCC to Lehman or, following closing, to</b></p> <p>10 <b>Barclays?</b></p> <p>11 A. Well, let me just say that I forwarded</p> <p>12 this on to Barclays to interpret, but my lay</p> <p>13 reading of this would be that these were net</p> <p>14 collects to the clearing member.</p> <p>15 <b>Q. So you understood this at the time you</b></p> <p>16 <b>received it?</b></p> <p>17 A. I understood it the way I described to</p> <p>18 you, yes.</p> <p>19 <b>Q. And you understood the payments to</b></p> <p>20 <b>Barclays would be in the hundreds of millions of</b></p> <p>21 <b>dollars?</b></p> <p>22 A. Yes.</p> <p>23 MR. MAGUIRE: We will mark as Exhibit</p> <p>24 628 a document Bates stamped OCC 0036408</p> <p>25 through 409.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 (Exhibit 628, document Bates stamped</p> <p>3 OCC36408 through 409 marked for</p> <p>4 identification, as of this date.)</p> <p>5 <b>Q. Is this an e-mail you received from</b></p> <p>6 <b>Jim McDaniel on the previous day, Saturday,</b></p> <p>7 <b>September 20?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. You will see the first question that</b></p> <p>10 <b>Jim McDaniel raises is how much of the billion</b></p> <p>11 <b>dollars in cash will be transferred to Barclays</b></p> <p>12 <b>at the closing. Do you know what happened to</b></p> <p>13 <b>that?</b></p> <p>14 A. I believe it was transferred.</p> <p>15 <b>Q. The entire 1 billion?</b></p> <p>16 A. Yeah, it would have been the deal that</p> <p>17 all of that margin was transferred.</p> <p>18 <b>Q. The second question he asks is how</b></p> <p>19 <b>would Barclays replace the 252 million in</b></p> <p>20 <b>letters of credit. Do you know what happened</b></p> <p>21 <b>about that?</b></p> <p>22 A. I'm not sure, but I think they may</p> <p>23 have called down those letters of credit because</p> <p>24 they were going to lapse and they wanted to make</p> <p>25 sure they had enough -- I'm not certain -- I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 know that they did call down some. I'm not sure</p> <p>3 whether it is these particular letters of</p> <p>4 credit.</p> <p>5 <b>Q. Do you know what happened with respect</b></p> <p>6 <b>to the 927 million in government securities at</b></p> <p>7 <b>JPM?</b></p> <p>8 A. I don't, I'm not certain, but they may</p> <p>9 have been part of a body of securities that are</p> <p>10 in dispute as to how they are going to be</p> <p>11 allocated that we -- I think the documents make</p> <p>12 pretty clear were supposed to be transferred to</p> <p>13 Barclays.</p> <p>14 <b>Q. Mr. McDaniel ends the e-mail talking</b></p> <p>15 <b>about excess margin and he talks about how</b></p> <p>16 <b>preliminary numbers actually showed a 5.1</b></p> <p>17 <b>million margin deficit, do you see that? Did</b></p> <p>18 <b>you get any update on the margin situation?</b></p> <p>19 A. I didn't, but I was under the</p> <p>20 impression at this time that -- and I can't</p> <p>21 remember the timing, that Barclays was going to</p> <p>22 do what it could to focus on this. I wanted to</p> <p>23 get the process started, but I was certainly not</p> <p>24 doing the credit analysis and deciding what was</p> <p>25 and wasn't acceptable to Barclays.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>Q. So you understood somebody at Barclays</b></p> <p>3 <b>was following up and doing the credit analysis?</b></p> <p>4 A. Doing what they could. I believe they</p> <p>5 were limited in their ability to do a fully</p> <p>6 satisfactory credit analysis because they didn't</p> <p>7 have in a form that was electronic that they</p> <p>8 could have manipulated the transaction data that</p> <p>9 would have enabled them to evaluate the risk.</p> <p>10 So I think to a certain extent, they</p> <p>11 were assuming a significant risk in going</p> <p>12 forward because they really didn't know</p> <p>13 themselves what the likely statistical outcomes</p> <p>14 were for the portfolio.</p> <p>15 <b>Q. Did Barclays obtain a statement from</b></p> <p>16 <b>the OCC on Lehman's accounts?</b></p> <p>17 A. I believe that I saw an e-mail that</p> <p>18 indicated that OCC had provided some data on</p> <p>19 collateral and positions to Barclays personnel.</p> <p>20 I did not see the data and I don't know</p> <p>21 firsthand that it was received or what it was,</p> <p>22 but I believe so.</p> <p>23 <b>Q. Did anyone tell you what the statement</b></p> <p>24 <b>showed in terms of the excess margin, the amount</b></p> <p>25 <b>of excess margin at the OCC?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>WITNESS' ATTORNEY: Objection to the</b></p> <p>3 <b>form. Time frame.</b></p> <p>4 <b>Q. Any time before the closing?</b></p> <p>5 <b>WITNESS' ATTORNEY: What's the date of</b></p> <p>6 <b>the statement?</b></p> <p>7 <b>Q. The statement meaning statement of</b></p> <p>8 <b>Lehman's positions as of the close of business</b></p> <p>9 <b>on Friday?</b></p> <p>10 A. I don't know what those positions were</p> <p>11 and I never saw that statement.</p> <p>12 <b>Q. Nobody told you what the amount of the</b></p> <p>13 <b>excess margin was?</b></p> <p>14 A. No, not -- I did not have information</p> <p>15 other than -- I don't recall having information</p> <p>16 other than the information transmitted by e-mail</p> <p>17 that I was copied on. If it came through my</p> <p>18 e-mail box, I may have just not have focused on</p> <p>19 it.</p> <p>20 MR. MAGUIRE: We will mark as Exhibit</p> <p>21 629 a document Bates stamped OCC 0036472</p> <p>22 through 36473.</p> <p>23 (Exhibit 629, document Bates stamped</p> <p>24 OCC 0036472 through 36473 marked for</p> <p>25 identification, as of this date.)</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>Q. You sent this e-mail to Mr. McDaniel</b></p> <p>3 <b>on Sunday, September 21?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. He had raised a question with you in</b></p> <p>6 <b>his prior e-mail to which you were responding.</b></p> <p>7 <b>Do you see that?</b></p> <p>8 A. Um-hm, yes, I do.</p> <p>9 <b>Q. And he is referring to the letter</b></p> <p>10 <b>draft raising a specific issue about assumed</b></p> <p>11 <b>liabilities. Do you see that?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. And he notes that the current draft</b></p> <p>14 <b>would appear to say that Barclays is not</b></p> <p>15 <b>assuming liabilities represented by the short</b></p> <p>16 <b>option positions in the accounts of Lehman at</b></p> <p>17 <b>OCC. Did you have any discussion with him about</b></p> <p>18 <b>that?</b></p> <p>19 A. He responds at the top of the page.</p> <p>20 <b>Q. Did you have any verbal discussion</b></p> <p>21 <b>with him about that?</b></p> <p>22 A. No, just what I communicated to him</p> <p>23 and I assume that he accepted my explanation.</p> <p>24 Which is -- sorry.</p> <p>25 <b>Q. Did you at the time agree with his</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>



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<p>1                   <b>ROSEN</b></p> <p>2 <b>observation that the draft --</b></p> <p>3       A. I didn't analyze it because I didn't</p> <p>4 think that it was relevant. If Barclays signed</p> <p>5 on to the asset transfer agreement and had</p> <p>6 separately reached some other agreement about</p> <p>7 was going to happen with respect to assets in</p> <p>8 the account that would not have limited</p> <p>9 Barclays' obligations having stepped into the</p> <p>10 transferred assumption agreement.</p> <p>11       So I didn't regard the clarification</p> <p>12 letter as a limiting Barclays' obligation to</p> <p>13 OCC, whatever the net result of the entitlements</p> <p>14 and obligations between Lehman and Barclays.</p> <p>15       <b>Q. You are getting a little ahead of me.</b></p> <p>16 <b>Let me ask you first, he is asking you about the</b></p> <p>17 <b>intention. Do you see that, the intention of</b></p> <p>18 <b>the clarification letter?</b></p> <p>19       A. Yes.</p> <p>20       <b>Q. So my first question is, was it the</b></p> <p>21 <b>intention in t,he clarification letter to say</b></p> <p>22 <b>that Barclays was not assuming liabilities</b></p> <p>23 <b>represented by short option positions?</b></p> <p>24       A. I didn't evaluate that because I did</p> <p>25 not think it was relevant to DTCC and so my</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2 responsibility -- I am sorry, to OCC, and my</p> <p>3 response was basically to say that the TAA</p> <p>4 speaks for itself on what our liabilities are to</p> <p>5 the OCC.</p> <p>6       <b>Q. I think I understand your answer and I</b></p> <p>7 <b>don't want to follow up on any evaluation that</b></p> <p>8 <b>you did or did not do. I am really asking about</b></p> <p>9 <b>the intention, not the evaluation of any</b></p> <p>10 <b>contractual language.</b></p> <p>11       <b>Was the intention of the parties as</b></p> <p>12 <b>you understood it that Barclays was not assuming</b></p> <p>13 <b>liabilities represented by short option</b></p> <p>14 <b>positions in the accounts of Lehman at the OCC?</b></p> <p>15       A. As between Barclays and Lehman, I</p> <p>16 would have to refresh my recollection of the</p> <p>17 definition of excluded liabilities to answer</p> <p>18 that question and it probably would have to call</p> <p>19 for me to interpret it.</p> <p>20       <b>Q. Why don't we give you the final</b></p> <p>21 <b>clarification letter and see, it is Exhibit 25,</b></p> <p>22 <b>which should be in front of you.</b></p> <p>23       <b>WITNESS' ATTORNEY: I don't think you</b></p> <p>24 <b>ever showed him 25.</b></p> <p>25       <b>Q. Here you are, sir.</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2       A. I think I need the APA as well.</p> <p>3       <b>Q. That's Exhibit 1.</b></p> <p>4       <b>WITNESS' ATTORNEY: Do you know which</b></p> <p>5 <b>draft of the clarification letter is being</b></p> <p>6 <b>referred to in Daniel's e-mail of</b></p> <p>7 <b>September 20, 2008, a.m.</b></p> <p>8       MR. MAGUIRE: I don't.</p> <p>9       A. I would have to -- it would take me</p> <p>10 some time to focus on this, but I don't think</p> <p>11 this provision is focused on options positions.</p> <p>12 But I'm not that familiar with this portion of</p> <p>13 the agreement. It will take me some time and</p> <p>14 I'm concerned that evaluating whether his</p> <p>15 concern is justified would require me to</p> <p>16 interpret these provisions.</p> <p>17       <b>Q. Yes, my question is directed not so</b></p> <p>18 <b>much to interpretation of provisions, more to</b></p> <p>19 <b>your understanding of what the intention of the</b></p> <p>20 <b>parties was. Did you have an understanding of</b></p> <p>21 <b>what the intent of the parties was?</b></p> <p>22       MR. HUME: I am going to object. That</p> <p>23 is a very subtle distinction. Why don't you</p> <p>24 ask whether there was a discussion about</p> <p>25 those provisions with the other side.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2 That's a factual question.</p> <p>3       MR. MAGUIRE: The factual question I</p> <p>4 have asked is with respect to Jim McDaniel's</p> <p>5 e-mail where he refers to the intention.</p> <p>6       <b>Q. And the question is at the time, did</b></p> <p>7 <b>you agree with him?</b></p> <p>8       MR. HUME: He has already answered</p> <p>9 that.</p> <p>10       A. I did not agree with him because I did</p> <p>11 not think it mattered what was in the agreement</p> <p>12 vis-a-vis any concerns he might have -- I should</p> <p>13 say in the APA vis-a-vis any concerns that he</p> <p>14 might have regarding the scope of the</p> <p>15 responsibility that Barclays was undertaking to</p> <p>16 OCC.</p> <p>17       <b>Q. That's where I said you were moving</b></p> <p>18 <b>ahead of me. I wanted to understand the</b></p> <p>19 <b>precursor to that. He says --</b></p> <p>20       A. I know, but I have never -- I didn't</p> <p>21 analyze it at the time or form a view. I formed</p> <p>22 a view that the subject matter was something</p> <p>23 that we didn't have to go into.</p> <p>24       So whether or not he was right, I</p> <p>25 could probably form a view, but it would take me</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 time that I haven't spent evaluating the concern</p> <p>3 that he is raising here and the various</p> <p>4 interconnected provisions of the agreement.</p> <p>5 <b>Q. You did not --</b></p> <p>6 A. I did not address this. I basically</p> <p>7 said it doesn't seem to be relevant, what the</p> <p>8 agreement provides in terms of our obligations</p> <p>9 to OCC.</p> <p>10 <b>Q. Now, he offered a proposed</b></p> <p>11 <b>clarification. Do you see he offers some</b></p> <p>12 <b>language here?</b></p> <p>13 A. He did.</p> <p>14 <b>Q. What did you do with that?</b></p> <p>15 A. I don't recall having done anything</p> <p>16 with it.</p> <p>17 <b>Q. Why not?</b></p> <p>18 A. Because I didn't believe that the</p> <p>19 provisions in the asset purchase agreement</p> <p>20 affected the undertakings that we were making to</p> <p>21 OCC.</p> <p>22 <b>Q. You said in your note to him, "What we</b></p> <p>23 <b>agree with Lehman regarding assumed liabilities</b></p> <p>24 <b>and what we agree with OCC are two different</b></p> <p>25 <b>things with potentially different economic</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>consequences."</b></p> <p>3 A. Right.</p> <p>4 <b>Q. Can you explain what you meant by</b></p> <p>5 <b>that?</b></p> <p>6 A. I can. If the position of a customer</p> <p>7 was in an account that Barclays had assumed and</p> <p>8 executed the TAA and was carrying at the</p> <p>9 clearing house, they had economic liability to</p> <p>10 the clearing house.</p> <p>11 If it were the case that as part of</p> <p>12 the deal, the liability that Barclays was</p> <p>13 assuming to the clearing corporation was a</p> <p>14 liability that, in fact, Lehman remained</p> <p>15 responsible for, then it was between Barclays</p> <p>16 and Lehman for Barclays to be made whole for</p> <p>17 whatever its obligation under the TAA was.</p> <p>18 So for that reason, I didn't think it</p> <p>19 was relevant. So it performed an obligation of</p> <p>20 a liability that it wasn't assuming, it could</p> <p>21 have had a claim over and against Lehman. But</p> <p>22 it couldn't have used that claim against Lehman</p> <p>23 that it wasn't assuming that liability for</p> <p>24 refusing to pay OCC what it owed OCC.</p> <p>25 <b>Q. So are you saying that the transfer</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>and assumption agreement set forth Barclays'</b></p> <p>3 <b>obligations to the OCC, but did not in any way</b></p> <p>4 <b>affect Barclays' rights under the clarification</b></p> <p>5 <b>letter?</b></p> <p>6 <b>WITNESS' ATTORNEY: Object to the</b></p> <p>7 <b>form.</b></p> <p>8 A. I wouldn't say that they were utterly</p> <p>9 unrelated, but I would have said that the</p> <p>10 liabilities that it did or didn't assume under</p> <p>11 the clarification -- under the deal documents as</p> <p>12 reflected in the various agreements overrode the</p> <p>13 contractual obligation that it was separately</p> <p>14 making to OCC.</p> <p>15 OCC wanted to know that Barclays was</p> <p>16 going to be responsible for every liability that</p> <p>17 arose in those accounts and that was the risk</p> <p>18 and liability that Barclays was assuming, even</p> <p>19 if that meant they were not liabilities that</p> <p>20 Barclays was contemplating acquiring from or</p> <p>21 assuming from Lehman as part of the deal.</p> <p>22 <b>Q. Did you have any discussions with</b></p> <p>23 <b>Mr. McDaniel about that?</b></p> <p>24 A. Just -- my recollection is that -- I</p> <p>25 don't recall him coming back to me. There may</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 be e-mail traffic that you could refresh my</p> <p>3 recollection, but I think this was the last of</p> <p>4 the discussion of this issue, but I could be</p> <p>5 forgetting something.</p> <p>6 MR. MAGUIRE: We will mark as Exhibit</p> <p>7 630 a document Bates stamped OCC 0036482</p> <p>8 through 483.</p> <p>9 (Exhibit 630, document Bates stamped</p> <p>10 OCC 0036482 through 483 marked for</p> <p>11 identification, as of this date.)</p> <p>12 <b>Q. You sent this e-mail to Mr. McDaniel</b></p> <p>13 <b>on Sunday morning?</b></p> <p>14 <b>WITNESS' ATTORNEY: No.</b></p> <p>15 A. It looks will like I sent it to him</p> <p>16 sometime in the afternoon on Sunday.</p> <p>17 <b>Q. 3:31 p.m.?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. And you were responding to his e-mail</b></p> <p>20 <b>of just about half an hour earlier? And he is</b></p> <p>21 <b>communicating, the purpose of his e-mail is to</b></p> <p>22 <b>communicate OCC's position to you?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And he explains that they need the</b></p> <p>25 <b>transaction, the transfer and assumption</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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agreement signed, right, and he says over towards the end of his e-mail on the next page in the paragraph numbered 3, "If the transaction does not close tonight, OCC would need to immediately liquidate and close out the Lehman accounts and is preparing to do so."

Do you see that?

A. I do see that.

**Q. You got back to him in your response and you say, "Very sorry to keep you hanging."**

**Can you tell me why did Barclays keep the OCC hanging on the Sunday afternoon?**

A. Because we didn't think that this was the most difficult issue to solve and we had much bigger fish to fry and so I was not able to turn my attention to this, although what I did do is forward it on, my recollection, is to a number of people, including the president of SIPC because I thought other people would have more leverage with OCC to get them to calm down and wait because it was looking less like we were going to be able to sign up the entire deal by that night.

So I thought it would probably be more  
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effective for me to spend my time dealing with the fires we were feeling with and let somebody else calm them down.

**Q. When did the Barclays' representatives, the businessmen make the decision to authorize the TAA, transfer and assumption agreement, to the execution of that agreement?**

A. I would have to look and see -- I would have to refresh my recollection of the e-mails transmitting the drafts to remember exactly when that was. But I mean, I think it might have been quite late when I asked Jonathan Hughes, once we had reached agreement on the language, whether or not they had sign off from the business people.

**Q. And when you say quite late, do you mean on the near side of midnight or far side of midnight on Sunday?**

A. I'm not sure, but it could have been on the far side of midnight. I may be misremembering, but my recollection is that the handling of the documentation of the sort of the clearing house agreements followed the sort of  
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the dealing with the various issues that needed to be solved, particularly with the DTCC.

I was not that concerned because I think subject to sort of the due diligence and whatever, we did not have the same problems in the OCC arrangement that we had with the DTC arrangement. So I was relatively saying that we would get there.

**Q. Who was the decision maker at Barclays who gave the sign-off authority if you know?**

A. I don't know who Jonathan Hughes corresponded with.

MR. MAGUIRE: Why don't we take a break and I may actually be done.

(Recess)

**Q. Sir, you have talked some today about the margin Lehman maintained at the OCC. Did you consider that to be an asset that was related to Lehman's exchange-traded derivatives?**

A. Yes.

**Q. What about the margin at other derivatives exchanges? Did you consider the margin that Lehman maintained at other derivatives exchanges to be an asset that was**

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**related to its exchange-traded derivatives?**

A. If it was part of the FCM business that they were acquiring or the equity brokering dealing, trading business, yes.

**Q. When you say FCM business, you are referring to futures commission merchant?**

A. Yes, or the options being an outgrowth of the equity trading and brokerage business.

**Q. Now, you mentioned a number of meetings that you had with various of your partners to obtain recollection and to prepare yourself for a number of things; one was your declaration and another was for this deposition. Did you also have meetings with your partners in connection with Jonathan Hughes' preparation for his deposition?**

A. I'm trying to remember. I'm not sure I was involved in Jonathan Hughes' preparation.

**Q. Did you not meet with Jonathan Hughes in connection with his deposition?**

MR. HUME: I am going to object to the question to the extent there may be privileged meetings that Mr. Hughes and Mr. Rosen had that may also have somehow

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<p>1 ROSEN</p> <p>2 informed the deposition, it may be hard to</p> <p>3 parse that.</p> <p>4 <b>Q. I am asking you about whether you met</b></p> <p>5 <b>with him where the purpose of the meeting was to</b></p> <p>6 <b>help him prepare and get recollections from</b></p> <p>7 <b>Cleary partners so he could testify as a</b></p> <p>8 <b>representative of Barclays.</b></p> <p>9 A. I don't recall participating in the</p> <p>10 meeting.</p> <p>11 <b>Q. In any of the meetings that you had</b></p> <p>12 <b>with your partners in connection with preparing</b></p> <p>13 <b>your declaration, or in connection with</b></p> <p>14 <b>preparing for this deposition, in searching</b></p> <p>15 <b>people's recollections, did any of your partners</b></p> <p>16 <b>suggest that anyone on the Lehman side had ever</b></p> <p>17 <b>indicated that margin was not included in the</b></p> <p>18 <b>deal?</b></p> <p>19 A. No, I don't recall any such statement.</p> <p>20 <b>Q. You have, I think, the asset purchase</b></p> <p>21 <b>agreement in front of you as Exhibit 1. If you</b></p> <p>22 <b>could turn to section 1.1, to the definition of</b></p> <p>23 <b>excluded assets on page 2 and the one I would</b></p> <p>24 <b>like to ask you about is subparagraph N. It is</b></p> <p>25 <b>at the top of page 4.</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>Did any of your partners invite you to</b></p> <p>3 <b>address that section of the APA?</b></p> <p>4 <b>WITNESS' ATTORNEY: That is a yes or</b></p> <p>5 <b>no question.</b></p> <p>6 A. No.</p> <p>7 <b>Q. Did you have any discussion with any</b></p> <p>8 <b>of your partners concerning whether margin was</b></p> <p>9 <b>an excluded asset under the APA?</b></p> <p>10 <b>WITNESS' ATTORNEY: I am going to</b></p> <p>11 <b>object on privilege grounds. If you want to</b></p> <p>12 <b>ask him for his understanding or discussions</b></p> <p>13 <b>with Lehman, that's fine, but his</b></p> <p>14 <b>declaration says what it says and --</b></p> <p>15 MR. MAGUIRE: Are you directing him</p> <p>16 not to answer?</p> <p>17 <b>WITNESS' ATTORNEY: Phrased that way,</b></p> <p>18 <b>yes.</b></p> <p>19 <b>Q. Let me ask you, sir, did any of your</b></p> <p>20 <b>partners describe to you any discussions that</b></p> <p>21 <b>they had had with anyone at Lehman concerning</b></p> <p>22 <b>the excluded asset in the APA?</b></p> <p>23 A. I don't think in our conversations we</p> <p>24 discussed the definition of excluded assets.</p> <p>25 <b>Q. Did you have any -- did anyone discuss</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>any conversation that they had had with anyone</b></p> <p>3 <b>at Lehman on that subject?</b></p> <p>4 A. That was not the subject of the</p> <p>5 discussions between us.</p> <p>6 <b>Q. Let me --</b></p> <p>7 A. But it doesn't surprise me that we</p> <p>8 didn't discuss that because derivatives</p> <p>9 contracts in that context would have been</p> <p>10 regarded as relating to the OTC derivatives</p> <p>11 contracts.</p> <p>12 <b>Q. Can you explain what you mean by that</b></p> <p>13 <b>answer?</b></p> <p>14 A. I believe that this reference is</p> <p>15 intended to be a reference to OTC derivatives</p> <p>16 contracts.</p> <p>17 <b>Q. What's the basis for that belief?</b></p> <p>18 A. Because it would have been</p> <p>19 fundamentally inconsistent with the agreement</p> <p>20 for it to have any other meaning because the</p> <p>21 derivatives business that was OTC was not part</p> <p>22 of the deal and the derivatives business that</p> <p>23 was the listed derivatives and the assets</p> <p>24 associated with it were.</p> <p>25 So I think that the natural reading</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 that provision is that it was intended to refer</p> <p>3 to the derivatives business that was not coming</p> <p>4 over, the derivatives contracts rather than not</p> <p>5 coming over.</p> <p>6 <b>Q. When were OTC derivatives excluded?</b></p> <p>7 A. I believe they were excluded as part</p> <p>8 of the original deal as reflected in the APA.</p> <p>9 <b>Q. Are you referring again to this</b></p> <p>10 <b>provision N?</b></p> <p>11 <b>WITNESS' ATTORNEY: I am going to</b></p> <p>12 <b>instruct him not to answer.</b></p> <p>13 MR. HUME: You are asking him to</p> <p>14 interpret the contract.</p> <p>15 <b>WITNESS' ATTORNEY: You asked him</b></p> <p>16 <b>about business understanding or business</b></p> <p>17 <b>deal, he has answered that, and now you are</b></p> <p>18 <b>asking him to prove it by asking him where</b></p> <p>19 <b>in the contract.</b></p> <p>20 <b>Q. When did you learn that the OTC</b></p> <p>21 <b>derivatives were not part of the deal?</b></p> <p>22 A. I don't remember when I first learned</p> <p>23 that.</p> <p>24 <b>Q. How did you learn that?</b></p> <p>25 A. I don't remember precisely how I first</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 learned it.</p> <p>3 <b>Q. Do you know from whom you learned</b></p> <p>4 <b>that?</b></p> <p>5 A. No. It might have been from reading</p> <p>6 the document. It may have been from Jonathan</p> <p>7 Hughes. It may have been from one of my</p> <p>8 partners.</p> <p>9 MR. MAGUIRE: Sir, I have no further</p> <p>10 questions for you at this time.</p> <p>11 MR. GAFFEY: I have just a couple. If</p> <p>12 it is OK, rather than have a break, we</p> <p>13 should be pretty quick. I am Bob Gaffey,</p> <p>14 Jones Day, special counsel to the debtor.</p> <p>15 EXAMINATION BY</p> <p>16 MR. GAFFEY:</p> <p>17 <b>Q. Earlier today, in response to one of</b></p> <p>18 <b>Mr. Maguire's questions, you spoke a bit about</b></p> <p>19 <b>conversations you had with Dan Gallagher at the</b></p> <p>20 <b>SEC regarding Barclays stepping into the shoes</b></p> <p>21 <b>of the Fed in respect to a certain repo. Do you</b></p> <p>22 <b>recall that topic generally?</b></p> <p>23 A. No, I don't recall having a</p> <p>24 conversation with Dan. He may have been one of</p> <p>25 the people at the SEC -- I couldn't remember</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 specifically who I had followed up with at the</p> <p>3 SEC.</p> <p>4 <b>Q. Let me give you a more general</b></p> <p>5 <b>question. Whether you remember the particular</b></p> <p>6 <b>person you spoke to or people you spoke to at</b></p> <p>7 <b>the moment, did you have conversations with</b></p> <p>8 <b>people at the SEC about the topic of the repo?</b></p> <p>9 A. I had discussions with the SEC about</p> <p>10 the need for a waiver by the SEC of certain</p> <p>11 rights that it might be construed to have. That</p> <p>12 would have affected the ability of Barclays, if</p> <p>13 the transaction hadn't closed, to exercise</p> <p>14 contractual rights embodied in the documentation</p> <p>15 of the repo that they were contemplating</p> <p>16 entering into with Lehman, and in the</p> <p>17 eventuality that the deal didn't close, I didn't</p> <p>18 want Barclays to be in the position where it</p> <p>19 wasn't going to be able to exercise all of its</p> <p>20 rights under the repo agreement.</p> <p>21 <b>Q. The repo that you are talking about,</b></p> <p>22 <b>was that what has been referred to, you might</b></p> <p>23 <b>have heard the term "replacement transaction,"</b></p> <p>24 <b>where Barclays stepped into the shoes of the</b></p> <p>25 <b>Fed?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 A. This is the transaction where the Fed</p> <p>3 unwound its repo, repurchase transaction with</p> <p>4 Lehman, and Barclays entered into the repo with</p> <p>5 Lehman on purportedly the same assets.</p> <p>6 <b>Q. What assurances were needed from the</b></p> <p>7 <b>SEC with regard to Barclays' rights under that</b></p> <p>8 <b>repo?</b></p> <p>9 A. It was, because of the possibility</p> <p>10 that LBI would have become -- I'm not a SIPC</p> <p>11 expert, but I can tell you that my understanding</p> <p>12 was that in the event of a SIPC liquidation of</p> <p>13 the broker/dealer, that if the broker/dealer had</p> <p>14 entered into a repurchase transaction, that</p> <p>15 there was some risk -- not saying that it was my</p> <p>16 understanding that this outcome was clear, but</p> <p>17 there was some potential risk that the ability</p> <p>18 to exercise rights of termination, liquidation,</p> <p>19 set-off, whatever it is, might have been</p> <p>20 something that the SEC would have had an ability</p> <p>21 under applicable provisions to have sought a</p> <p>22 stay on and we wanted the SEC to agree that in</p> <p>23 consideration for Barclays doing this, which it</p> <p>24 would probably not otherwise have undertaken to</p> <p>25 do in the face of an insolvent counterparty, in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 the event that the deal was not going to be</p> <p>3 consummated.</p> <p>4 <b>Q. And when you say applicable</b></p> <p>5 <b>provisions, applicable provisions of what, of</b></p> <p>6 <b>the Bankruptcy Code?</b></p> <p>7 A. I think there are maybe 34 SIPC</p> <p>8 provisions. As I said, I'm not an expert.</p> <p>9 <b>Q. Do you recall, as we talk about this,</b></p> <p>10 <b>do you recall who at the SEC you communicated</b></p> <p>11 <b>with about this topic?</b></p> <p>12 A. That's what I -- I don't remember</p> <p>13 who -- I'm sure it is in the -- I'm sure it is</p> <p>14 in the e-mails. Well, I suppose -- no, it would</p> <p>15 have to be in the e-mails because something came</p> <p>16 back from them saying that they would agree to</p> <p>17 waive.</p> <p>18 <b>Q. And the nature of the rights that you</b></p> <p>19 <b>were talking about, again as a general matter --</b></p> <p>20 <b>I take your point you're not an expert in the</b></p> <p>21 <b>area -- but what type of rights were you asking</b></p> <p>22 <b>for assurances about in terms of Barclays'</b></p> <p>23 <b>exercising its rights under the repo?</b></p> <p>24 A. I think they are rights to terminate</p> <p>25 the transactions; for example, in the event of a</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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default or insolvency set-off claims against collateral. It would be whatever rights are in the relevant master repurchase documentation.

**Q. Did you review the relevant master repurchase documentation when you had these discussions?**

A. I did not.

**Q. Who did?**

A. I did not.

Let me just say something, I received copies of them. I didn't actually open the e-mails with those until recently. But in terms of the risk to Barclays, when the Fed asked them to do this, one of my colleagues, Sandra Rocks provided advice to Barclays.

**Q. And I am sorry, Sandra --**

A. Sandra Rocks.

**Q. What is Sandra Rocks' area of specialty?**

A. Creditors' rights.

**Q. And did Sandra Rocks propose some language, either directly or through you, propose particular language --**

A. Yeah, I drafted the language and I  
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provided it to the SEC and also I believe to SIPC.

**Q. And the rights that were at the center of this discussion had to do with Barclays, as a general matter, Barclays' rights to recover the amounts that it advanced under the repo?**

A. I think it would have been whatever the contractual rights under the terms of the agreement were.

**Q. Did you or anyone on the Barclays' side of the table have any discussions with anyone on the Lehman side of the table or the business people or lawyers about this issue?**

A. About the reservation of rights?

**Q. Yeah, about, this for lack -- it is my term, not yours -- but about this contingency plan about what would happen if the broker/dealer were liquidated?**

A. I don't recall who all the participants were on the phone. It may very well have been Lehman and Fed representatives and Barclays' representatives, but I can't -- I don't recall for sure.

**Q. When you say you don't recall, is it**  
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because you have a vague recollection someone were there and you're not sure, or because there were a lot of phone calls and you can't tell one way or the other?

A. Both.

**Q. Were you part of any discussions with Lehman or its representatives at Weil Gotshal about what Barclays' rights would be in the event of the termination of the repo?**

A. No. We would have assumed that they -- that the documents spoke for itself. They would know from the standard form documentation.

**Q. Are you aware of any discussions where, with Lehman or its representatives at Weil Gotshal, about what, if anything, the documents said that addressed that possibility of a termination of the repo?**

A. No, the agreement I think spoke for itself and they executed it and I don't know who was involved in the process of approving and executing the repo.

**Q. So we have a clear record, the document you are talking about is the master**  
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repurchase agreement or the transaction documents relating to the sale transaction or both?

A. Well, I believe your question was directed to the master repurchase agreement.

**Q. Did, at any point, were you involved in any discussions or to your knowledge was anybody at Cleary -- withdrawn.**

To your knowledge, was anybody on the Barclays' side of the table, Barclays or its representatives involved in discussion with Lehman or its representatives about provisions in the clarification letter that need -- that addressed the issue of the termination of the repo?

A. I'm not sure, am I the designated spokesperson -- what I spoke to you about, what I responded to on the repo was something I responded to because I was actually directly involved.

**Q. I should have said this up front, I am sorry --**

A. I'm not aware --

**Q. We have collapsed your deposition into**  
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<p>1                   <b>ROSEN</b></p> <p>2   <b>both 30(b)(6) and your individual deposition.</b></p> <p>3   <b>My questions go to your personal knowledge. I</b></p> <p>4   <b>have sort of reversed the rules a little bit.</b></p> <p>5       A. I am sorry, could you repeat the</p> <p>6   question.</p> <p>7       <b>Q. Do you have any knowledge of whether</b></p> <p>8   <b>anyone on the Barclays' side of the table,</b></p> <p>9   <b>Barclays or its representatives, spoke to anyone</b></p> <p>10   <b>on the Lehman side of the table, Lehman or its</b></p> <p>11   <b>representatives, about provisions that needed to</b></p> <p>12   <b>be included in the clarification letter</b></p> <p>13   <b>regarding the termination of the repo?</b></p> <p>14       MR. HUME: Object to the form.</p> <p>15       A. I am sorry?</p> <p>16       MR. HUME: I object to the form.</p> <p>17       <b>Q. I think you can answer.</b></p> <p>18       A. I believe that there may have been</p> <p>19   conversations between the lawyers, maybe Alan</p> <p>20   Kaplan at Barclays, but I don't have personal</p> <p>21   knowledge because I was not involved in the</p> <p>22   events leading up to the notice and the</p> <p>23   clarification that was made in the clarification</p> <p>24   letter.</p> <p>25       But I assume that -- it is obvious</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2   that since the provisions were ultimately</p> <p>3   included in the clarification letter, that it</p> <p>4   was conveyed in the form of the amendments to</p> <p>5   the clarification letter that reflected those</p> <p>6   provisions.</p> <p>7       <b>Q. OK. I would like to show you -- let's</b></p> <p>8   <b>mark this as our next exhibit.</b></p> <p>9       <b>(Exhibit 631, document Bates stamped</b></p> <p>10    <b>BCI-EX(S) 201894 through 95 marked for</b></p> <p>11    <b>identification, as of this date.)</b></p> <p>12       <b>Q. The document I have put before you</b></p> <p>13    <b>Mr. Rosen marked as Exhibit 631 bears Bates</b></p> <p>14    <b>number BCI-EX(S) 00201894 through 895.</b></p> <p>15       <b>Have you seen the document before?</b></p> <p>16       A. Again, not parsing every word, but it</p> <p>17   looks like an e-mail that I sent.</p> <p>18       <b>Q. And you'll see it is an e-mail from</b></p> <p>19    <b>you to Josephine Wang?</b></p> <p>20       A. Yes.</p> <p>21       <b>Q. I can't --</b></p> <p>22       A. This is what I was referring to --</p> <p>23       <b>Q. It is?</b></p> <p>24       A. -- earlier in terms of the sort of the</p> <p>25   clarification of the language included in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2   order, and then we asked SIPC and, I guess it</p> <p>3   was Mike Macchiaroli now that I see this, to</p> <p>4   confirm that they wouldn't seek such a stay.</p> <p>5       <b>Q. I can't tell from the e-mail address</b></p> <p>6    <b>with whom or what is Josephine Wang affiliated.</b></p> <p>7       A. You can't tell that. I think she is</p> <p>8   in the legal department at SIPC.</p> <p>9       <b>Q. And you say in this e-mail to</b></p> <p>10    <b>Josephine Wang and Steven Sharbeck, Mike</b></p> <p>11    <b>Macchiaroli, "Below is the language we believe</b></p> <p>12    <b>to be necessary to ensure that the order is</b></p> <p>13    <b>sufficiently broad to cover the relevant</b></p> <p>14    <b>Barclays Capital transactions."</b></p> <p>15       <b>Do you see that?</b></p> <p>16       A. Yes.</p> <p>17       <b>Q. And below that is some proposed</b></p> <p>18    <b>language and below that is a note that says,</b></p> <p>19    <b>"Mike, I am trying to place us in the document,</b></p> <p>20    <b>are you with me?"</b></p> <p>21       <b>Where did the particular language set</b></p> <p>22    <b>off in italics come from, beginning, "Exercise</b></p> <p>23    <b>of any rights," and ending "September 24, 2008"?</b></p> <p>24       A. Probably from my colleague, Sandra</p> <p>25   Rocks.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2       <b>Q. And was this particular language shown</b></p> <p>3    <b>to or discussed with, to your knowledge, anybody</b></p> <p>4    <b>on the Lehman side of the table, including its</b></p> <p>5    <b>business people or representatives?</b></p> <p>6       A. I think that certainly they would have</p> <p>7   seen the order in the proposed sale -- the sale</p> <p>8   order.</p> <p>9       <b>Q. Well, you are a bit ahead of me. I</b></p> <p>10    <b>guess I should have asked that. The order that</b></p> <p>11    <b>you refer to, is that the sale order?</b></p> <p>12       A. Yes.</p> <p>13       <b>Q. Do you know if this language wound up</b></p> <p>14    <b>in the sale order?</b></p> <p>15       A. I would have to check. I believe so,</p> <p>16   but I would have to check to confirm.</p> <p>17       <b>Q. And in the language that you proposed</b></p> <p>18    <b>in this e-mail, there is a reference to section</b></p> <p>19    <b>559 of the Bankruptcy Code. Do you see that?</b></p> <p>20       A. Yes.</p> <p>21       <b>Q. Were you familiar with the terms of</b></p> <p>22    <b>Section 559 of the Bankruptcy Code when you</b></p> <p>23    <b>proposed this language to the Section and SIPC?</b></p> <p>24       A. No, I was the transmitter.</p> <p>25       <b>Q. Do you know if anyone at -- on the</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1                   <b>ROSEN</b></p> <p>2   <b>Barclays side of the table, including its</b></p> <p>3   <b>representatives, spoke to anyone on the Lehman</b></p> <p>4   <b>side of the table, including its representatives</b></p> <p>5   <b>about Section 559 of the Bankruptcy Code?</b></p> <p>6       A. I don't have a specific recollection</p> <p>7   of that.</p> <p>8       WITNESS' ATTORNEY: Mr. Gaffey, let me</p> <p>9   state for the record, for what it's worth,</p> <p>10   the language, the italicized language says,</p> <p>11   "The order that the stays set forth above</p> <p>12   shall not apply to," and I just am not sure</p> <p>13   whether or not that really is referring to</p> <p>14   the sale order as opposed to some other</p> <p>15   order.</p> <p>16       MR. GAFFEY: Neither am I. That's why</p> <p>17   I asked the question.</p> <p>18       <b>Q. Does what your counsel has to say</b></p> <p>19   <b>refresh your recollection?</b></p> <p>20       MR. HUME: I think it is the SIPC</p> <p>21   order.</p> <p>22       A. Hang on a second. You know what, I</p> <p>23   think you're right. This predated the sale</p> <p>24   order. This is Wednesday -- this is the 17th of</p> <p>25   September, so there was a stay put into place</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2   and I guess this was to seek clarification of</p> <p>3   that.</p> <p>4       <b>Q. This refers to the SIPC order, the</b></p> <p>5   <b>SIPA order?</b></p> <p>6       THE WITNESS: Is that the only order?</p> <p>7       MR. GAFFEY: Let's go off the record</p> <p>8   for a minute.</p> <p>9       (Recess)</p> <p>10       MR. GAFFEY: Back on the record.</p> <p>11       <b>Q. Mr. Rosen, do you know one way or the</b></p> <p>12   <b>other what order is being referred to? I mean</b></p> <p>13   <b>from memory, do you know one way or the other</b></p> <p>14   <b>what order is being referred to in the document</b></p> <p>15   <b>we have marked as 631, your e-mail?</b></p> <p>16       A. I believe it was in anticipation of</p> <p>17   the sale order, but I'm not 100 percent</p> <p>18   confident.</p> <p>19       <b>Q. And how much time -- I know it was a</b></p> <p>20   <b>busy week -- but how much time did you devote to</b></p> <p>21   <b>conversations with the SEC about this assurance</b></p> <p>22   <b>language that's set out in Exhibit 631, this</b></p> <p>23   <b>issue?</b></p> <p>24       A. I really don't have a clear</p> <p>25   recollection. We sent it down to them and I had</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2   a conversation and asked them to focus on it and</p> <p>3   then come back. I think there was -- they</p> <p>4   understood what the import of it was. And then</p> <p>5   they came back and confirmed that they</p> <p>6   wouldn't -- you know, that they agreed they</p> <p>7   wouldn't exercise that right to seek a stay.</p> <p>8   But it didn't take a lot of to'ing and fro'ing</p> <p>9   on the telephone to get there. Their people are</p> <p>10   I think quite familiar with their rights.</p> <p>11       <b>Q. Did there come a point that it came to</b></p> <p>12   <b>your attention that the repurchase agreement</b></p> <p>13   <b>was, in fact, terminated?</b></p> <p>14       A. Well, it came to my attention that the</p> <p>15   clarification letter provided for a collapse</p> <p>16   instead of unwinding the repurchase agreement</p> <p>17   and then separately transferring to basically</p> <p>18   collapse that into one step. And it was part</p> <p>19   of -- the collateral that had been under that</p> <p>20   agreement was part of the securities that were</p> <p>21   being sold.</p> <p>22       <b>Q. My question is a little different. It</b></p> <p>23   <b>goes to the timing point more than anything</b></p> <p>24   <b>else, but did there come a time when you learned</b></p> <p>25   <b>that the prepurchase agreement had been</b></p> <p>          TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2   <b>terminated? And if so, when did you find that</b></p> <p>3   <b>out?</b></p> <p>4       A. Well, with a consummation of the</p> <p>5   transaction, it was terminated.</p> <p>6       <b>Q. Do you know when the repurchase</b></p> <p>7   <b>agreement was terminated?</b></p> <p>8       MR. HUME: Objection, asked and</p> <p>9   answered.</p> <p>10       A. My recollection is that the agreement</p> <p>11   was terminated as part of the consummation of</p> <p>12   the sale transaction.</p> <p>13       <b>Q. That would be at the closing on the</b></p> <p>14   <b>22nd?</b></p> <p>15       A. Which would be at the closing.</p> <p>16       <b>Q. Did it come to your attention at any</b></p> <p>17   <b>point prior to the closing that Barclays issued</b></p> <p>18   <b>a notice of termination to Lehman?</b></p> <p>19       A. At some point, I did see e-mail</p> <p>20   traffic indicating that a notice had been sent</p> <p>21   in error and then my recollection is that there</p> <p>22   was an effort to document that in the</p> <p>23   clarification letter.</p> <p>24       <b>Q. When did the fact of the notice come</b></p> <p>25   <b>to your attention?</b></p> <p>          TSG Reporting - Worldwide   877-702-9580</p>



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<p>1 ROSEN</p> <p>2 A. I honestly don't recall.</p> <p>3 <b>Q. Was it after the sale hearing?</b></p> <p>4 A. I honestly don't recall when I became</p> <p>5 aware of it to be honest with you. There is</p> <p>6 probably an e-mail somewhere about it. I don't</p> <p>7 have a date on it.</p> <p>8 MR. GAFFEY: OK. Let's mark this</p> <p>9 document as Exhibit 632.</p> <p>10 (Exhibit 632, document Bates stamped</p> <p>11 CGSH 163813 through 815 marked for</p> <p>12 identification, as of this date.)</p> <p>13 <b>Q. I have put before you, Mr. Rosen, what</b></p> <p>14 <b>has been marked as Exhibit 632 document bearing</b></p> <p>15 <b>Bates number CGSH 00163813 through 815. Take a</b></p> <p>16 <b>look at the document, please, sufficient to tell</b></p> <p>17 <b>me whether you have seen it before.</b></p> <p>18 A. Yes, it looks like the e-mail</p> <p>19 correspondence to which I was a party.</p> <p>20 <b>Q. Does this e-mail constitute the</b></p> <p>21 <b>assurance that had been requested from the SEC?</b></p> <p>22 A. Yeah, I believe this is.</p> <p>23 <b>Q. And had you spoken with Alastaire</b></p> <p>24 <b>Bambach about the topic?</b></p> <p>25 A. I don't recall. It is possible that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 he -- that I did or that he was on the phone</p> <p>3 when I spoke to someone regarding it. I</p> <p>4 honestly don't have a clear recollection. There</p> <p>5 was so many conversations with the SEC.</p> <p>6 <b>Q. And you asked Alastaire in the e-mail</b></p> <p>7 <b>at the top of the chain, an e-mail dated</b></p> <p>8 <b>September 18, 2008 at the time of 4:01 p.m. -- I</b></p> <p>9 <b>beg your pardon, the time of 3:59 p.m.</b></p> <p>10 <b>Alastaire, "Is this comfort something that we</b></p> <p>11 <b>may share with others who may have an interest."</b></p> <p>12 <b>Do you see that?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Who were the others you are referring</b></p> <p>15 <b>to?</b></p> <p>16 A. I'm looking at that and I don't recall</p> <p>17 specifically whether this was sort of just a</p> <p>18 general, abstract question or whether I had</p> <p>19 somebody in mind. I honestly don't recall</p> <p>20 sitting here today.</p> <p>21 <b>Q. And did you share this comfort with</b></p> <p>22 <b>others?</b></p> <p>23 A. I think I probably shared it with the</p> <p>24 client certainly.</p> <p>25 <b>Q. Did you share it with anybody at Weil</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>Gotshal?</b></p> <p>3 A. I don't recall providing it directly</p> <p>4 to Weil Gotshal.</p> <p>5 <b>Q. Do you know if it was provided</b></p> <p>6 <b>indirectly to Weil Gotshal?</b></p> <p>7 A. I don't have a recollection about</p> <p>8 that. It may have been. I do not. It may have</p> <p>9 been that I did this because the client at</p> <p>10 Barclays wanted to forward it on and they asked</p> <p>11 me whether they could. But I just -- but</p> <p>12 honestly, this is not a keen recollection.</p> <p>13 <b>Q. Do you have any knowledge, direct or</b></p> <p>14 <b>indirect, as to whether this comfort language</b></p> <p>15 <b>was shared with Lehman or Weil Gotshal?</b></p> <p>16 A. I really don't recall.</p> <p>17 <b>Q. You referred a few times today in</b></p> <p>18 <b>various contexts to -- you can put the document</b></p> <p>19 <b>aside. To various circumstances where -- and</b></p> <p>20 <b>this is, again, not a quote, but you talked</b></p> <p>21 <b>about jeopardy to the deal closing by Monday the</b></p> <p>22 <b>22nd, that's a prospect that you have talked</b></p> <p>23 <b>about a few times today. Was there a drop-dead</b></p> <p>24 <b>date for closing?</b></p> <p>25 A. No, there was just a perception that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 if it didn't close by Monday, there could be</p> <p>3 developments in the marketplace which might have</p> <p>4 complicated or prevented the deal from getting</p> <p>5 done. I don't think it was an ultimatum.</p> <p>6 I think people wanted to get the deal</p> <p>7 done, but I think there was a concern that</p> <p>8 letting another business cycle go by was just --</p> <p>9 because we didn't know what was going to happen.</p> <p>10 I think this was the weekend where we had</p> <p>11 learned very late Sunday night that, you know,</p> <p>12 Morgan Stanley and Goldman Sachs had quite</p> <p>13 expeditiously become banks and people were</p> <p>14 worried and the hurry to do that was no doubt in</p> <p>15 part due to concerns.</p> <p>16 So I wouldn't say that it was a drop</p> <p>17 dead or an ultimatum or anything like that. It</p> <p>18 was that people realized it became more</p> <p>19 complicated and there was more noise that could</p> <p>20 interfere with the transaction the more time</p> <p>21 that elapsed. So we all, I think internally at</p> <p>22 Cleary regarded it as, put it this way, if the</p> <p>23 deal wasn't ready to close on Monday, we didn't</p> <p>24 want to be the ones responsible for it not being</p> <p>25 ready to close on Monday morning, so we took it</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 seriously.</p> <p>3 <b>Q. That issue aside, the deal could have</b></p> <p>4 <b>closed on Tuesday?</b></p> <p>5 A. Theoretically, it could have closed on</p> <p>6 Tuesday if things hadn't intervened. It was</p> <p>7 more the risks that were associated with not</p> <p>8 closing expeditiously that were the concerns.</p> <p>9 You had to remember, the markets were very</p> <p>10 volatile and there were assets whose valuation</p> <p>11 was the source of considerable uncertainty and</p> <p>12 concern.</p> <p>13 MR. GAFFEY: I don't have anything</p> <p>14 further. Thank you for your time.</p> <p>15 MR. DAKIS: The committee has no</p> <p>16 questions.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 (Time Noted: 4:35 p.m.)</p> <p>19</p> <p>20</p> <p>21 <u>EDWARD J. ROSEN</u></p> <p>22 Subscribed and sworn to</p> <p>23 before me this EDWARD J. ROSEN day</p> <p>24 of February, 2010.</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 INDEX:</p> <p>3 WITNESS EXAM BY: PAGE:</p> <p>4 E. Rosen Mr. Maguire 6</p> <p>5 Mr. Gaffey 202</p> <p>6 EXHIBITS</p> <p>7 Exhibit No. Marked</p> <p>8 Exhibit 622 declaration of Edward J. Rosen 8</p> <p>9 Exhibit 623 document Bates stamped 120</p> <p>10 CGSH0002699 through 700</p> <p>11 Exhibit 624 document Bates stamped DTCC 122</p> <p>12 00126 through 00198</p> <p>13 Exhibit 625 document Bates stamped DTCC 152</p> <p>14 00359 through 361</p> <p>15 Exhibit 626 document Bates stamped BCI-CG 175</p> <p>16 00024097 through 99</p> <p>17 Exhibit 627 document Bates stamped CGSH 181</p> <p>18 0034491 through 92</p> <p>19 Exhibit 628 document Bates stamped 183</p> <p>20 OCC36408 through 409</p> <p>21 Exhibit 629 document Bates stamped OCC 186</p> <p>22 0036472 through 36473</p> <p>23 Exhibit 630 document Bates stamped OCC 195</p> <p>24 0036482 through 483</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 EXHIBITS</p> <p>3 Exhibit No. Marked</p> <p>4 Exhibit 631 document Bates stamped 213</p> <p>5 BCI-EX(S) 201894 through 95</p> <p>6 Exhibit 632 document Bates stamped CGSH 220</p> <p>7 163813 through 815</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK )</p> <p>4 )ss:</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, MARY F. BOWMAN, a Registered</p> <p>7 Professional Reporter, Certified Realtime</p> <p>8 Reporter, and Notary Public within and for</p> <p>9 the State of New York, do hereby certify:</p> <p>10 That EDWARD J. ROSEN, the witness</p> <p>11 whose deposition is hereinbefore set forth,</p> <p>12 was duly sworn by me and that such</p> <p>13 deposition is a true record of the testimony</p> <p>14 given by such witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this action</p> <p>17 by blood or marriage and that I am in no way</p> <p>18 interested in the outcome of this matter.</p> <p>19 In witness whereof, I have hereunto</p> <p>20 set my hand this 19th day of February, 2010.</p> <p>21</p> <p>22</p> <p>23 <u>MARY F. BOWMAN, RPR, CRR</u></p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 ROSEN  
2 \* \* \*ERRATA SHEET\* \* \*  
3 NAME OF CASE: In Re: Lehman Brothers  
4 DATE OF DEPOSITION: February 19, 2010  
5 NAME OF WITNESS: EDWARD J. ROSEN  
6 Reason codes:  
7 1. To clarify the record.  
8 2. To conform to the facts.  
9 3. To correct transcription errors.  
10 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
11 From \_\_\_\_ to \_\_\_\_  
12 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
13 From \_\_\_\_ to \_\_\_\_  
14 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
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21 From \_\_\_\_ to \_\_\_\_  
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24 \_\_\_\_\_  
25 EDWARD J. ROSEN  
  
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